

Mon, Sep 7 at 9:01 p.m.

Dear Chair Patrick and Members of the Executive Committee,

Three matters, with their sources, each bearing on a resolution the Committee passed on 26 August.

One. The finding that Bylaw 726 is consistent with policies 4.4.2 and 4.4.3 rests on the applicants operating "through a water licence". The water used by the cidery comes from a groundwater well, and that well is not licensed. The licence is a private surface water licence for irrigation, and the source recorded against it is Frank Spring, which is Murray Creek. The applicants' own letter of 21 July says they are seeking provincial clarification on whether a groundwater licence is also required. The health authority told them in 2021 that one should be obtained, and that extraction from the well might affect the flow of that same water.

Two. The Committee asked the Municipality to clarify how the cidery definition is consistent with agricultural use. The definition permits a cidery to operate with nothing grown on Bowen Island at all. The checklist in the Committee's own package records that the definition "does not appear to be completely consistent with an agricultural use given the dependency on imported produce for cider production".

Three. The wording of the proposed cidery definition came from Bylaw No. 528, 2020, which this Committee approved in January 2021 as not contrary to the Policy Statement. On that referral, policies 4.1.5 and 4.4.3 were marked not applicable. Those are two of the policies the Committee has now made findings on.

Each is set out below.

1. The water licence

The Request for Decision records, on policies 4.4.2 and 4.4.3, that "the applicant's letter associated with the July 27, 2026 meeting identifies that the cidery uses an average of 110 litres of well water per day and operates through a water licence", and concludes that the amendment "appears to be consistent with the subject policies given the existing water use".

At the meeting the Director of Planning Services described the licence as the point at which staff "kind of hit a full stop". A member asked whether there was a question about whether a licence exists under the Water

Sustainability Act. The Chair said he was not aware of one. There is such a question, and it has been on the record since 2021.

The water used by the cidery comes from a groundwater well. That well is not licensed. The licence held by the applicants is C107480, a private surface water licence for irrigation, authorising 3,083.7 cubic metres a year. The source recorded against it in the provincial register is Frank Spring.

The applicants' own letter of 21 July 2026, under the heading "Water Licencing", says: "We hold surface-water licence C107480, administered by the Ministry of Water, Land and Resource Stewardship, authorizing up to 3,083.7 cubic metres per year for private irrigation. Because the property's well serves both the residence and the cidery, we are seeking provincial clarification on whether a groundwater licence is also required and will apply if directed to do so."

Since 29 February 2016 the Water Sustainability Act has required a licence for all non-domestic groundwater use in British Columbia.

On 11 May 2021 the health authority recorded internally that because the well now served a food premises and not just a single-family residence, it became a regulated water supply system under the Drinking Water Protection Act.

On 27 May 2021 the health authority's public health engineer wrote to the applicant and to his engineers: "given there are other wells and users within the aquifer, [a] water licence should be obtained to confirm that there is no adverse impact to the other wells and that extraction from the well would not affect the flow of the Frank Spring."

On 23 July 2021 the health authority wrote again, recommending the applicant consult the ministry "to ensure you have the correct water license in place for your operation". The reply the same day was "And we'll look into the license."

Why this bears on policy 4.4.3 in particular. The applicants' own 2021 report identifies Frank Spring as the source of Murray Creek. So the health authority's engineer was warning that extraction from the well might affect the flow of the watercourse that runs through the site. Policy 4.4.3 concerns water use not to the detriment of in-stream uses.

And policy 4.4.2 is still standing on the same sentence. The Committee's third resolution reopened 4.4.3. It did not touch 4.4.2. Both findings rest on the same statement about 110 litres and a water licence. Policy 4.4.2 concerns measures ensuring density and intensity of land use are not increased where the freshwater supply is known to be a problem,

and the Trust's own staff comment on that policy says the proposed use "is an increase in the intensity of land use given the increased demand on water resources for fruit production". So the report contains an intensity-increase statement and a consistency finding, and the licence is what reconciles them.

Source. The 2021 correspondence quoted above is in a release made to me by Vancouver Coastal Health under the Freedom of Information and Protection of Privacy Act, its file 2021-F-208. That release is not published. I hold it and can provide copies of any of these pages on request.

2. The cidery definition and the 25 per cent

The Committee's second resolution asks the Municipality to clarify how the cidery definition is consistent with the agricultural use of the land and the Rural Residential designation.

The Directives Only Checklist in the Committee's own package speaks to part of that already. It records: "Establishment of the cidery definition does not appear to be completely consistent with an agricultural use given the dependency on imported produce for cider production."

The correspondence from Margaret Underhill and Brian Buckingham, at Attachment 3 to the Request for Decision, records that the majority of apples used to date in the cider production are brought to Bowen Island from the Similkameen in the form of juice.

And the applicants have set out the sourcing mechanism themselves. At page 18 of their application, under the heading "Leased Orchard as Part of a Single Farm Enterprise", they state that "we lease a small orchard in Cawston, BC", and argue that provincial frameworks recognise farm operations spanning multiple parcels, quoting the Agricultural Land Reserve Use Regulation to the effect that a reference to a use of agricultural land includes all the land on which a single farm operation is conducted, "regardless of (a) whether activities are conducted over one parcel or multiple parcels, or (b) whether, in the case of multiple parcels, the parcels are adjacent."

Cawston is in the Similkameen Valley, hundreds of kilometres from Bowen Island.

The definition permits that, and more.

Clause 2.3 puts a fixed meaning for "cidery" into Section 1.1 of the Land Use Bylaw, the general definitions. So from adoption the word carries that meaning throughout the bylaw and permanently.

The requirement is that at least 25 per cent of production comes from fruit grown "on the same lot, or from another lot which is part of the same business". The second route is an alternative to the first, so all of the 25 per cent may come by it and none from the lot the cidery sits on.

The definition places no geographic limit on that other lot. It does not have to be on Bowen Island. It does not have to be in the region. It can be anywhere in British Columbia. Nothing in the wording ties it to the island, to the Trust Area, or to any distance from the cidery. Nor does the definition limit how many other lots, so the 25 per cent may be assembled across as many as the business has. It does not define "same business", and requires no common ownership, no shared title and no lease of any particular kind.

So a cidery could operate under this definition with nothing grown on Bowen Island at all.

The remaining 75 per cent is expressly permitted to be imported British Columbia fruit.

Clause 2.3 also imposes no planting requirement. It sets no acreage and does not require that anything be grown on the property. The two acres of planted orchard sometimes mentioned in connection with this operation is not a requirement of the Land Use Bylaw. "Land Based Winery" is not a description of where an operation sits. It is the name of a status a producer can apply for under a commercial sales agreement with the Liquor Distribution Branch, and the two acres, the 25 per cent and a 100 per cent British Columbia content requirement are its conditions. Taking that status is optional. The licence a cidery must hold is a different thing: a manufacturer licence in the winery sub-category, issued by the Liquor and Cannabis Regulation Branch. That licence is compulsory and contains no acreage requirement, no sourcing requirement and no British Columbia content requirement at all.

Clause 2.3 takes the numbers from the optional status and puts them in the Land Use Bylaw. It does not require the operator to hold that status.

The definition also sets no maximum. It states a ratio: production may be four times the fruit the business grows. A ratio to a number the operator sets is not a limit. And nothing ties production to a harvest. The definition says nothing about when fruit is grown, or whether what arrives is fresh, stored or frozen. "Fruit" is undefined and juice is not mentioned. Juice stores, so production need not follow a season.

Why this reaches beyond the property. Planning staff's position is that cider production is agriculture. If a cidery is agriculture, and a cidery is a facility that need grow nothing on its own lot, has no maximum and

need not follow a harvest, then that is what agriculture in the Land Use Bylaw contains. Agriculture is a permitted principal use in RR 1, RR 2 and RR 3 and in most other zones, and a permitted use is not applied for.

That consequence follows from staff's own position rather than from anything clause 2.3 says on its face. No report has examined it.

Two points on the regulation the applicants rely on. The provision is section 3, and its marginal note is "If farming extends over multiple parcels". Neither is given in the application. And "agricultural land" is not defined in the regulation; it takes its meaning from the Agricultural Land Commission Act, being land included in the Agricultural Land Reserve. At page 19 of the application, on the page after the passage quoted above, the applicants write: "While our property lies outside the ALR, these thresholds provide a credible benchmark."

Pieces have been taken from a liquor licensing scheme and from agricultural land regulation and fitted into a land use bylaw. Each piece is doing a job it was not written for, and nobody has looked at what the assembly amounts to.

3. Where the drafting came from

Clause 2.3 is not new drafting. Clause 2.3 reproduces the Land Use Bylaw's Winery definition, clause by clause, with wine to cider and grapes to fruit, the own-lot share lowered from 50 per cent to 25 per cent, and the deleted import cap restored at 75 per cent, with picnic area and lounge endorsement added.

The Winery definition is in its present form because of Bylaw No. 528, 2020, adopted 22 November 2021. Bylaw 528 made three changes to the same subject.

Bylaw 528 deleted the definition of "vineyard", as one of sixteen definitions deleted at clause 2.1(b), and struck the term from the Permitted Uses listings at clause 3.13, which removed seven terms at once. Vineyard had been a permitted principal use only in Tourist Commercial TC 1. The deleted definition read: "means the use of land, buildings or structures for the growing of grapes or other fruits and berries for the production of wine from grapes or other fruits and berries at a winery located on the lot where the grapes or other fruits and berries are grown, or for commercial wholesale."

Bylaw 528 amended the definition of "agriculture". Before Bylaw 528 the definition excluded "intensive agriculture, horticulture and vineyard". After Bylaw 528 the definition excludes only intensive

agriculture. The same clause inserted the word "plants" into the growing activity, so that "crops, livestock and other animals" became "crops, plants, livestock and other animals". So the amendment removed horticulture from the exclusions and wrote what horticulture covered into the definition.

That is the change the applicants rely on. The application deals with the removal under a heading of its own, "Material Change to the Land Use Bylaw", at page 17, and states that "since our Temporary Use Permit (TUP) was issued, there has been a material amendment to Bowen Island's Land Use Bylaw, specifically, the removal of the definition of 'Vineyard'". The application reasons that with that definition repealed the only relevant definition is "Agriculture", and concludes that the cidery "fully meets the definition of a permitted Agricultural Use".

Bylaw 528 amended the definition of "winery". Five changes, of which three matter here. Bylaw 528 removed "the vineyard", leaving the enacted text reading "grapes grown at on the same lot". Bylaw 528 changed "the same vineyard business" to "the same business". And Bylaw 528 deleted the sentence limiting imported British Columbia grapes to no more than 50 per cent of wine production.

So the "same business" wording now proposed for cidery entered the Land Use Bylaw through Bylaw 528, in the same amendment that removed the vineyard exclusion from the agriculture definition and deleted the import cap.

How Bylaw 528 came to this Committee. Bylaw 528 was considered on 13 January 2021. The staff report records the project intent as amendments that "better streamline and clarify the LUB while not changing permitted uses on properties on Bowen Island".

The Directives Only Checklist accompanying that referral records the Municipality's own view of which policies applied. The Request for Decision says the Municipality "has considered the Islands Trust Policy Statement Directives Policies Checklist and has indicated if the Municipality has addressed relevant policies". Policies 4.1.4 to 4.1.9, on agricultural land, were marked not applicable. So were 4.4.3, on water use not to the detriment of in-stream uses, and 5.4.4, on waste disposal.

Policy 4.4.2 was ticked as consistent. Neither the Trust's report nor the Municipal staff reports summarised in it says anything about water.

I raise this because the Committee is now being asked to advise on a definition whose mechanism came from that amendment. The Committee has since resolved that Bylaw 726 may be contrary to or at variance with

policy 4.1.5, one of the policies marked not applicable in 2021, and has asked for reassessment against 4.4.3, another of them.

My mother and I wrote to the Committee about Bylaw 528 on 25 April 2021 and again on 5 May 2021. Records bearing on the vineyard and winery provisions, their origin, history and removal are the subject of my access request to the Trust of 19 July 2026.

I would be grateful if these could be before whoever prepares the written response.

Yours sincerely,

Heather Miller

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