Parish Council Member Briefing Note Subject: Proposal for Community Orchard

on Common Land Either side of B2114, Cuckfield Road.

This briefing note is intended to inform Parish Council members of their legal responsibilities, statutory constraints, and public safety obligations in relation to the proposed establishment of a community orchard on registered common land.

It outlines the governance framework, including relevant legislation such as the Commons Act 2006, and highlights the environmental, safeguarding, and highway safety risks associated with the proposal. The document also provides a summary of estimated maintenance costs and ecological considerations, enabling members to make an informed and legally compliant decision.

Members are asked to consider the implications of supporting development on common land, including potential precedent, enforcement responsibilities, and the Council's duty of care to residents particularly children and vulnerable road users.

Summary of Proposal

A resident has proposed the establishment of a community orchard on a parcel of Parish Council owned registered common land located adjacent to Cuckfield Road. The proposal includes planting fruit trees and potentially installing protective structures and signage.

Legal and Governance

- **Landowner Discretion**
  The land in question is currently managed as a rewilded area by the Council, supporting biodiversity and low-impact stewardship. The opposite verge is maintained at very little cost to the Council (2 cuts per year) but now maintained weekly by neighbouring residents, who voluntarily cut the grass and contribute to the visual upkeep of the area. This informal arrangement reflects a balanced and community-supported approach to land care, which the Council wishes to preserve. The Parish Council, as custodian of the land, retains the authority to determine appropriate uses. Proposals that conflict with legal obligations, public safety, or 1 wider community interests of the community should be given careful consideration and, where appropriate, declined.
- **Commons Act 2006 – Section 38**
  The land is designated as registered common land. Any works that restrict access or alter its character, such as fencing, raised beds, or tree planting, require formal consent from the Secretary of State via the Planning Inspectorate.

- **Fruit Tree Planting Regulations**
    - Tree planting on common land is considered as restricted work if it:
    - Alters the character of the land (e.g. from open grassland to orchard)
    - Involves fencing or protective structures
    - Restricts public access
    - Introduces permanence

  According to DEFRA guidance, planting trees, especially in groups or with guards, usually requires Section 38 consent.

- **Public Access Protections**
  Common land is protected for open public enjoyment. A community orchard may compromise this principle by creating semi-exclusive use or altering informal stewardship. The land is currently maintained voluntarily by a neighbouring resident, and the Council wishes to preserve this arrangement.

- **Highway Safety and Safeguarding Risks**
  One site lies adjacent to a busy main road and directly opposite a playground. Establishing a new attraction on this side may encourage children and families to cross unsafely, increasing the risk of accidents. This is particularly problematic given the lack of formal crossing infrastructure, limited visibility, and the trajectory of the road, which includes a blind corner near the junction. This junction is already recognised as a significant safety risk, particularly for vehicles exiting onto the main road. The introduction of fruit trees may further obstruct sight lines and increase pedestrian movement in an area that is not designed for safe crossing. The Council has a duty to safeguard children who may be drawn to the orchard to pick fruit, unaware of the traffic risks. Even with due care and attention, the presence of fruit trees may inadvertently entice unsupervised crossing, placing children in harm's way and compounding existing highway hazards.

- **Deer Attraction and Public Safety Risk**
  Fruit trees attract deer, particularly in late summer and autumn, when ripening fruit and fallen apples become a seasonal draw. This can introduce new public hazards:
    - Deer crossing roads to access fallen fruit may lead to vehicle collisions, especially near blind corners, fast-moving traffic, or during low-visibility periods such as dusk, dawn, or under low winter sun. This is already an issue in this area so will exacerbate the problem.
    - The risk is significantly heightened where visibility constraints already exist, as is the case at the junction adjacent to the proposed orchard site.
    - Introducing fruit trees in this location could compound existing highway risks, particularly for drivers exiting onto the main road and for pedestrians near the playground.
    - Fruit rotting on the floor attracts wasps. One area is next to a children's playpark.

  The Council must consider its duty of care in mitigating foreseeable risks, including those arising from wildlife attraction. Any planting scheme should be subject to ecological and highway safety assessment before proceeding.

- **Precedent and Consistency**

  Approving structured or enclosed use on common land may set a precedent for future requests, complicating long-term land management and undermining equitable access.

- **Environmental and Strategic Priorities**

  The Council is committed to biodiversity and sustainable land use. Cultivation or structural development may conflict with ecological goals or future stewardship plans.

- **Estimated Costs (Without Volunteers)**

  If the orchard were to proceed without volunteer support, estimated annual maintenance costs for 10–20 trees would be approximately £2,000–£2,500, covering:
  - Grass cutting
  - Tree surgery and pruning
  - Fruit drop management
  - Weeding and mulching
  - Pest and disease monitoring
  - Public liability insurance

- **Site Suitability – Soil Conditions**

  The proposed site is known to be seasonally wet, which poses challenges for fruit tree viability:
  - Poor drainage leads to oxygen deprivation and root stress
  - High risk of root rot in species like apple, cherry, plum, and peach
  - Nutrient leaching weakens young trees and reduces productivity

- **Officer Recommendation**

  Based on the current findings, it is not recommended that the Council support the proposal for a community orchard at this location. The assessment has identified a combination of legal constraints, highway safety and safeguarding risks, environmental concerns, and land management implications, as outlined above.

  The Council remains open to exploring alternative locations or formats for community-led green initiatives that can be safely and appropriately accommodated elsewhere in the parish. We continue to welcome ideas that align with our commitment to inclusive, environmentally responsible public spaces.

  Should members wish to undertake further investigation into the viability of this site before reaching a final decision, the following actions are advised to ensure transparency and protect the Council's governance position:
  - Write to the Secretary of State (via the Planning Inspectorate) to obtain formal clarification on whether the proposed planting of fruit trees constitutes restricted works under Section 38 of the Commons Act 2006, and whether any exemptions or conditions might apply.
  - Engage with West Sussex County Highways to assess the site lines and visibility at the adjacent junction. This will help determine whether planting trees in this location could compromise highway safety, particularly in relation to pedestrian movement, vehicle access, and the existing visibility constraints.

Consider implementing additional traffic calming measures at the junction and along the approach, such as:

- Hatched road markings to improve speed moderation and visual awareness
- Additional Speed Indicator Devices (SIDs) to reinforce speed compliance
- Reduced speed limits or enhanced signage to mitigate risks near the playground and orchard site

If the above satisfies council that this is a viable project at this location

- Undertake a resident survey to outline the proposal and gather feedback from local residents. This will ensure that any further consideration is informed by community views and conducted in a transparent and inclusive manner.