

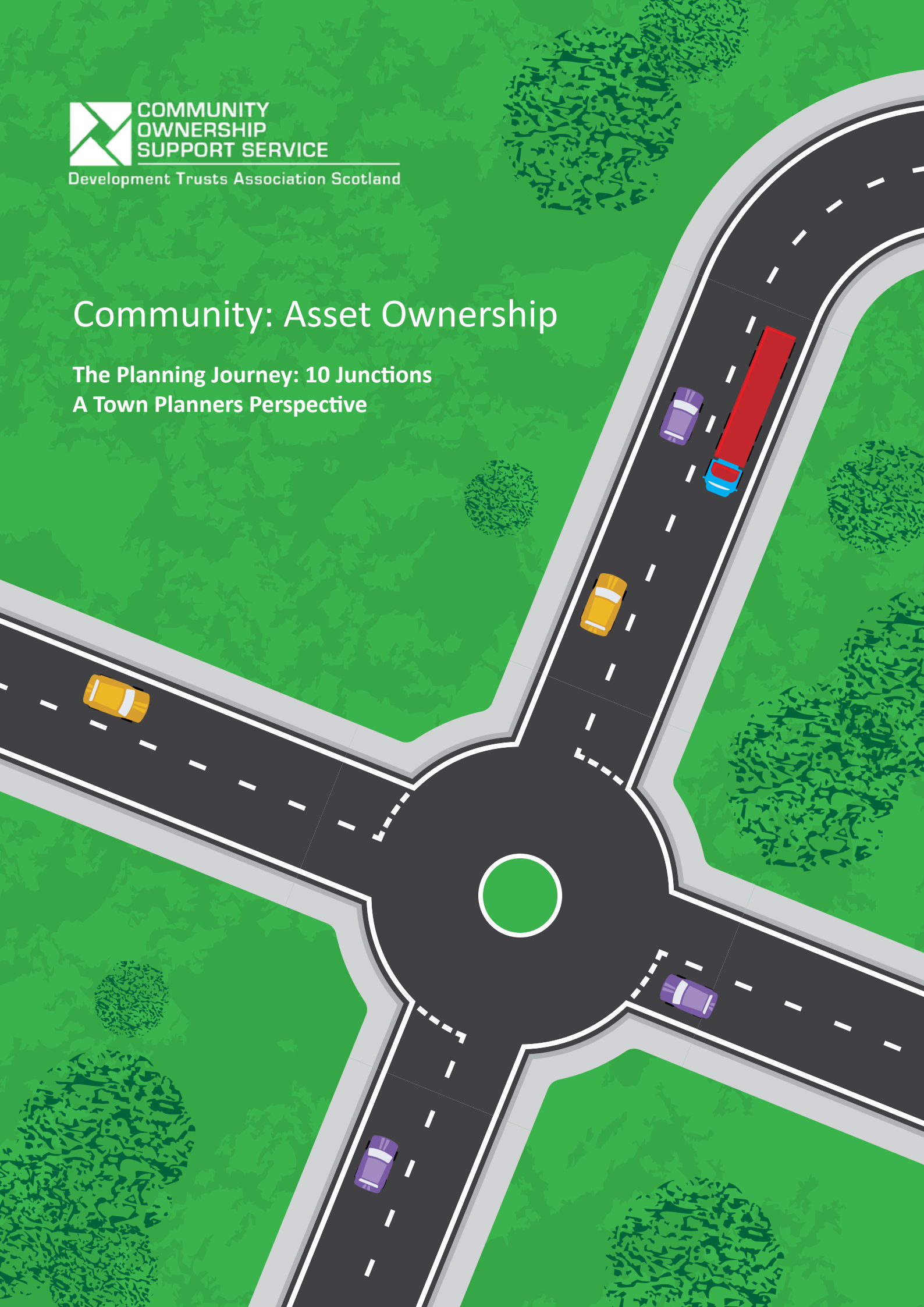


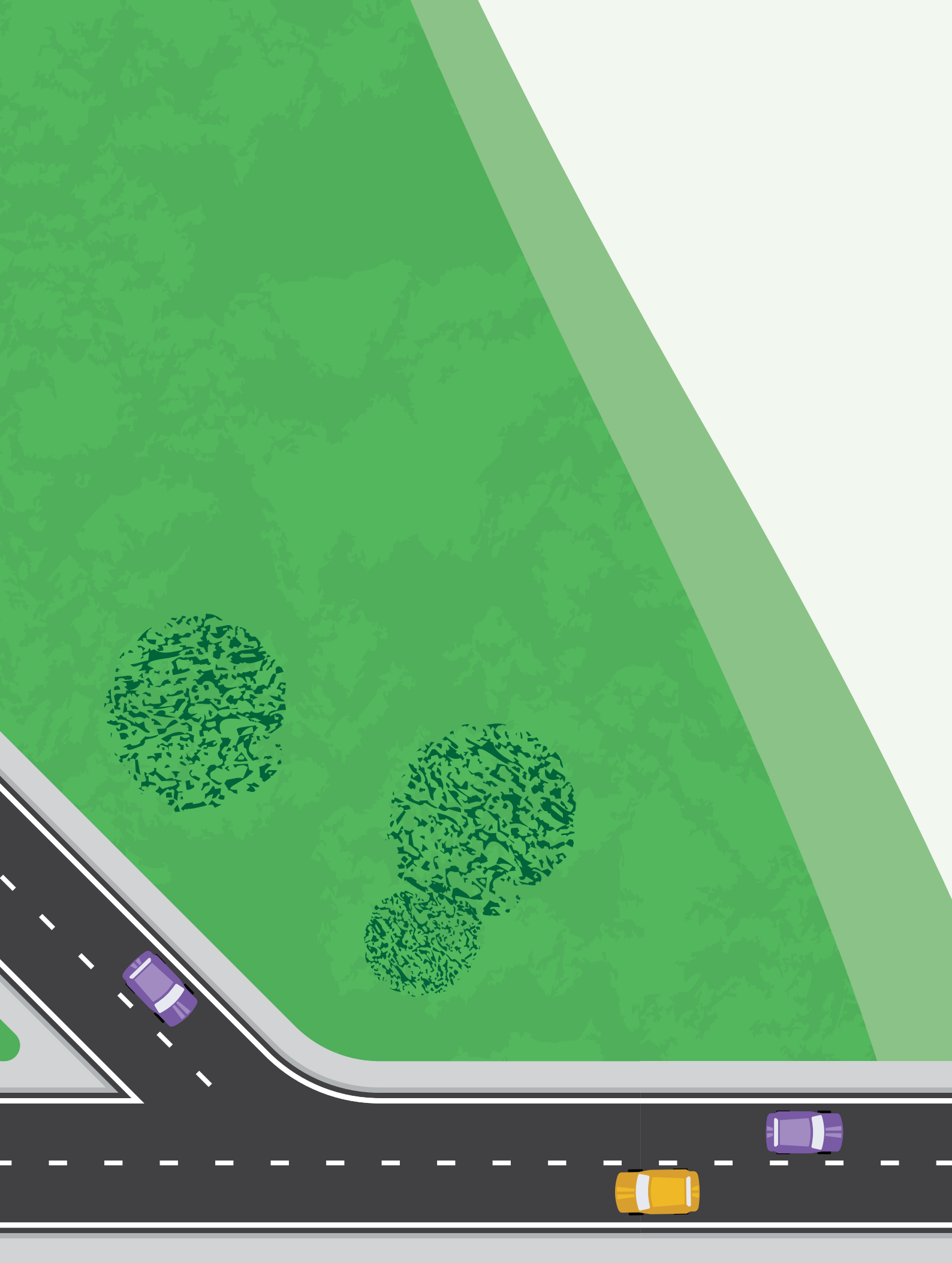
COMMUNITY  
OWNERSHIP  
SUPPORT SERVICE

Development Trusts Association Scotland

# Community: Asset Ownership

The Planning Journey: 10 Junctions  
A Town Planners Perspective





## Preface

The Community Ownership Support Service (COSS), delivered by the Development Trusts Association Scotland (DTAS), is funded by the Scottish Government to support the sustainable transfer of publicly held assets into community ownership. This adviser led service provides advice and information on all aspects of asset transfer on a Scotland wide basis.

COSS has identified that, time and again, communities find themselves involved in the planning process, but not necessarily armed with the right tools to be fully engaged at the right time. There is plenty of advice and information available relating to the planning system in Scotland, particularly on the [Scottish Government's website](#) and from local planning authorities websites. Most of this information, however, is factual and assumes that you are in the right place, at the right time, with the right resources to fully engage in the process. There is limited help to get you involved if you want to enter the process at the 'wrong' time or if you need to 'mould' a circumstance to suit your purposes and to create a position where a proposed development can be mutually beneficial to your needs as well as the developer.

This guide seeks to help you think creatively about how to engage in the process. It looks at real circumstances or possible examples which may help communities think of alternative ways to be involved in the planning process, to secure benefits through development which may not otherwise be available to them.

This guide aims to be thought provoking as to what you can do / how far you can get involved in planning in ways which are beyond the conventional. It encourages you to think laterally so that you and the developer can achieve both your aims and it seeks to convince you to consider what you can give, rather than what you can take.

One thing to think about when you engage in this process - in planning terms there is **no absolute right or wrong** - all stakeholders (for example, landowner, developer, local planning authority and neighbours) will place different importance on different matters; at times, decisions may be made on the basis of benefits to the national or regional area or your Council area, rather than your specific local community. A balance has to be struck, therefore, between which

matter carries most importance and the best decision lies somewhere in the spectrum between the two extremes. This guide will try to provide you with tools to add weight to the matters which are most important to you, to seek to tip the balance of the decision in your favour. It is a tool to help your journey in the planning process towards sustainable development, rather than a means of preventing development which as a community you may not prefer.

This guide has been prepared by Sheila Hobbs, a chartered town planner with 30 years' experience working in town planning in the public and private sector. She is a Director of Scott Hobbs Planning, a consultancy which advises mainly private developers and companies in their development projects. The ideas and suggested solutions in this publication are her own, developed over time and as a result of the experience she has gained in her career, or are based on examples provided by COSS. They are not necessarily shared by or promoted through the company. As each case has its own particular merits, further consideration should be given to the particulars of your case and no reliance should be placed on the information within this guide as a definitive circumstance which can be applied to your case. It is for the Courts to ultimately decide planning issues and this guide does not seek to override or in any way provide advice for any specific case.

The process and advice is based on the planning system as it exists at the time of writing this report (2017). However, the planning process is currently being reviewed by the Scottish Government, which wishes to strengthen the planning system and support sustainable economic growth across the country. Changes are likely to be made to planning processes and requirements. Therefore, potential solutions to issues facing communities are likely to change at some point in the future too. At this current time, the Scottish Government has published its 'Places, People and Planning' [Position Statement](#) which takes account of views put forward during the extensive consultation exercise on how to improve planning. A Planning Bill will likely to be introduced in the Scottish Parliament in Winter 2017.

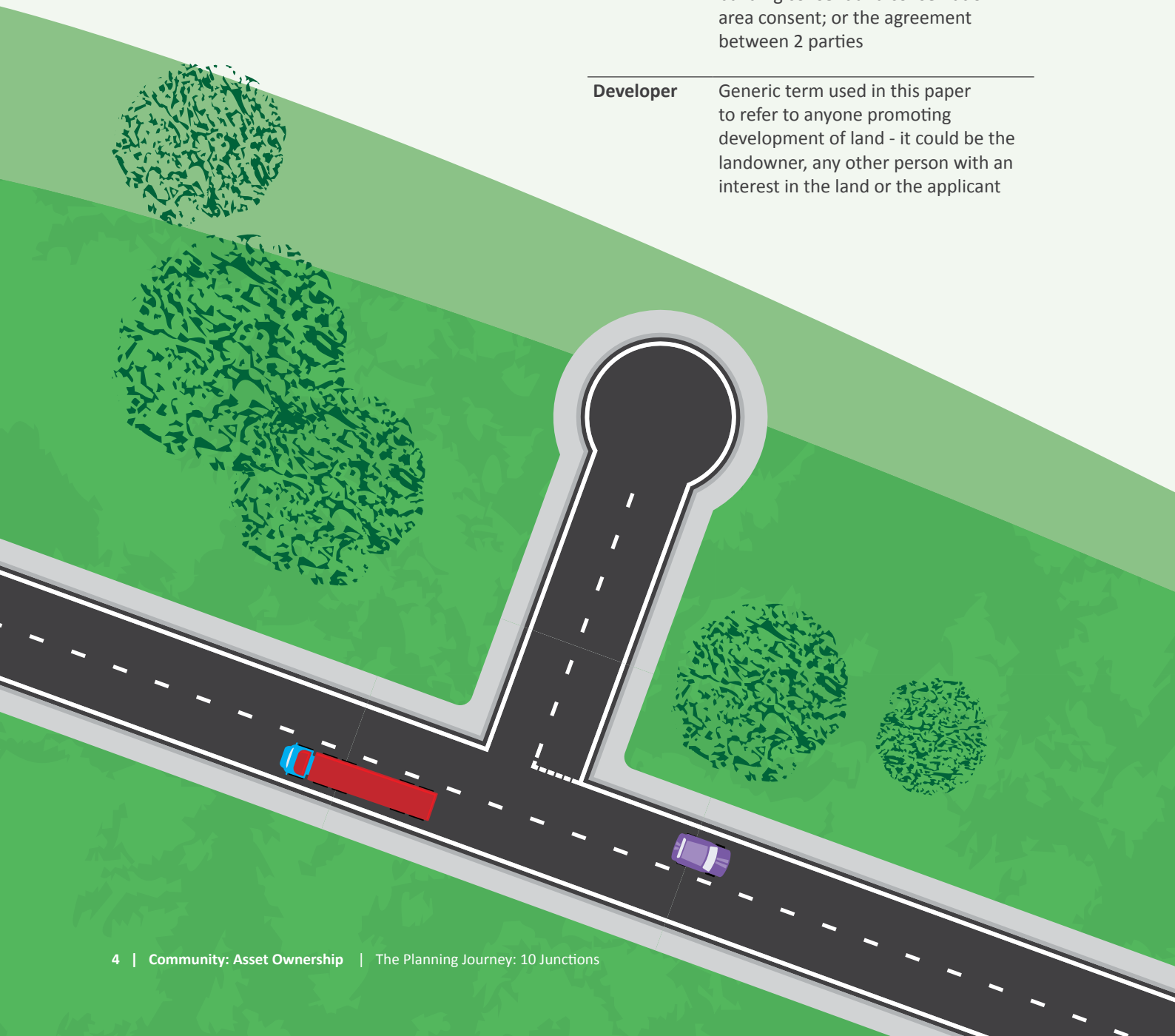


## Abbreviations

COSS	Community Ownership Support Service
DTAS	Development Trusts Association Scotland
GNA	Good Neighbour Agreement
LDP	Local Development Plan
LPA	Local Planning Authority
PAS	Planning Aid Scotland
RTPI	Royal Town Planning Institute
S75	Section 75 [Planning Obligation]
SEPA	Scottish Environment Protection Agency
SG	Scottish Government

## Glossary

<b>Act</b>	Town and Country Planning (Scotland) Act 1997, Planning etc. (Scotland) Act 2006
<b>Allocation</b>	Land identified for a specific use, e.g. housing, in the Development Plan
<b>Applicant</b>	The person or group applying for planning permission
<b>Call for sites</b>	Initial formal stage in the preparation of the LDP; LPA requests interested parties to submit their 'bids' for land to be allocated for particular uses
<b>Certificate of Lawfulness</b>	A process and decision which confirms whether the planning permission is required for development or not
<b>Consent</b>	A positive decision on a planning application. Generic term used in this paper for planning permission, listed building consent and conservation area consent; or the agreement between 2 parties
<b>Developer</b>	Generic term used in this paper to refer to anyone promoting development of land - it could be the landowner, any other person with an interest in the land or the applicant

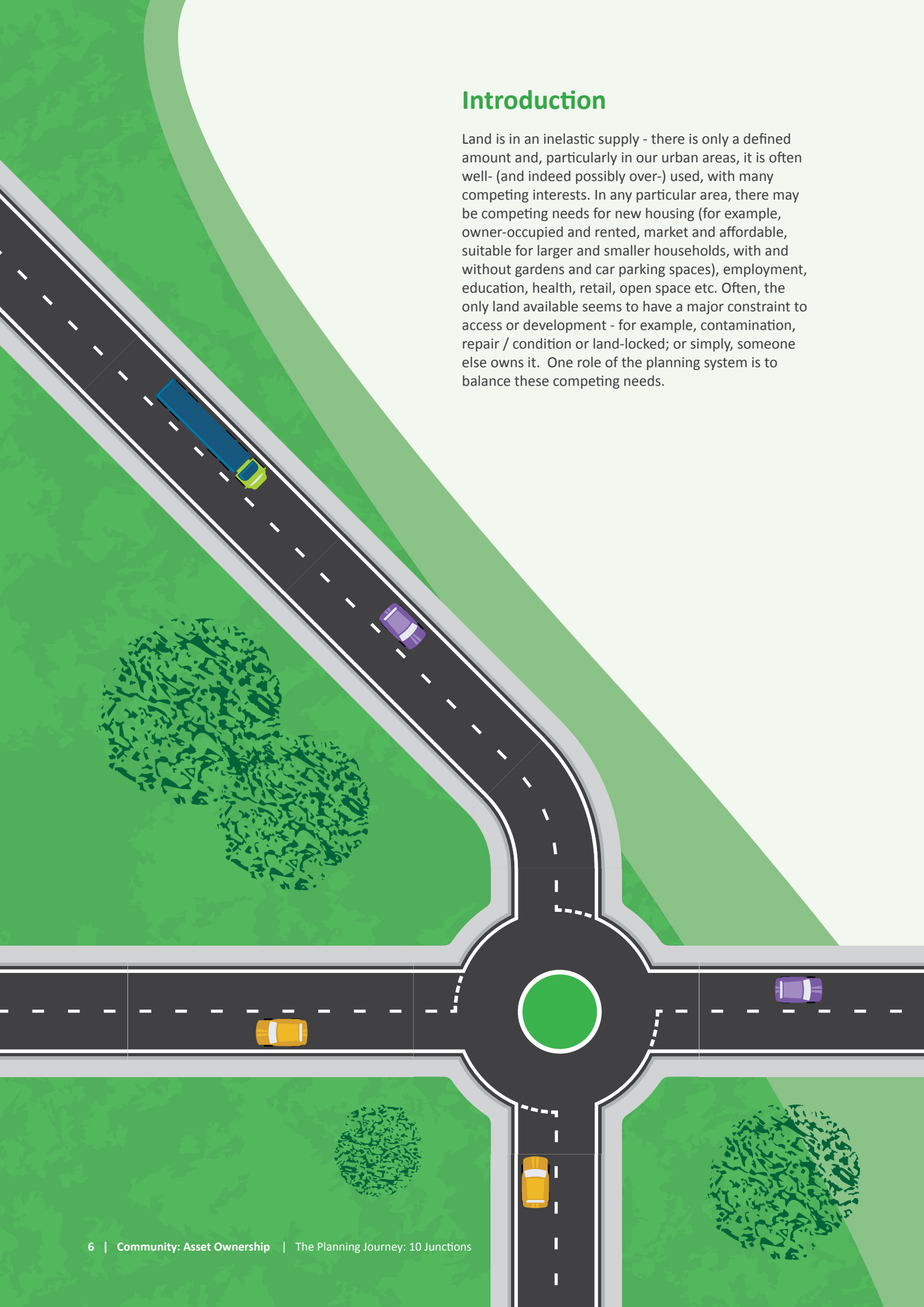


<b>Development</b>	Physical changes to land or buildings or the change of use of land or buildings - as defined in the Town and Country Planning (Scotland) Act 1997, as amended	<b>Major Development</b>	Large scale development <a href="#">View Hierarchy of Developments.</a>
<b>Development Plan</b>	Prime material consideration in determination of planning applications; prepared by each planning authority as an expression of its views with regard to the future use of land within the area. <a href="#">View processes diagram.</a>	<b>Market Housing</b>	Housing available on the open market, open to all, as opposed to affordable housing
<b>Employment Land</b>	Generally land which can be or is developed for purposes which create jobs - normally within Classes 4 (Office / light industrial), Class 5 (general industrial) and Class 6 (Storage and distribution) of the Town and Country Planning (Scotland) (Use Classes Order) 1997, as amended	<b>Material Consideration</b>	Factor which must be taken into account when determining planning applications
<b>Good Neighbour Agreement</b>	Agreement made between a developer and a community pursuant to Section 75 of the Town and County Planning (Scotland) Act 1997, as amended by the planning etc. (Scotland) Act 2006	<b>Permitted Development</b>	Development which is of a smaller scale and for which planning permission is not required - Town and Country Planning (Scotland) (General Permitted Development) Order 1992, as amended
<b>Land-locked</b>	Land which does not have any mean of access	<b>Plan-making process</b>	Call for sites, Main Issues Report, Proposed Plan <a href="#">View Hierarchy of Developments.</a>
<b>Local Development</b>	Minor development <a href="#">View Hierarchy of Developments.</a>	<b>Planning Conditions</b>	Conditions imposed on a planning permission
<b>Local Development Plan</b>	As per Development Plan <a href="#">See processes diagram.</a>	<b>Planning Obligation</b>	Same meaning as Section 75 - an agreement entered into by a local planning authority and landowner
<b>Local Planning Authority Main Issues Report</b>	Second formal stage in the preparation of the LDP; LPA produces a Paper identifying the main land use issues facing its area and the preferred options to deal with these issues; published for formal consultation and participation by all interested parties	<b>Planning Permission</b>	The consent of the local planning authority given to a developer to carry out development
		<b>Planning Policy</b>	Statement of the means by which a local planning authority will regulate and control the use of land and deliver land use on sites within its areas - normally contained within the development plan and Supplementary Guidance
		<b>Pre-application advice</b>	Advice given by the LPA before a planning application is submitted
		<b>Refusal/Refused</b>	A negative decision by the local planning authority following the submission of a planning application
		<b>Section 75</b>	An agreement entered into by a local planning authority and landowner pursuant to Section 75 of the Town and County Planning (Scotland) Act 1997, as amended by the planning etc. (Scotland) Act 2006; also known as Planning Obligations, S75 and legal agreement
		<b>Supplementary Guidance</b>	Additional information issued by local planning authorities to expand upon requirements in the development plan.



## Introduction

Land is in an inelastic supply - there is only a defined amount and, particularly in our urban areas, it is often well- (and indeed possibly over-) used, with many competing interests. In any particular area, there may be competing needs for new housing (for example, owner-occupied and rented, market and affordable, suitable for larger and smaller households, with and without gardens and car parking spaces), employment, education, health, retail, open space etc. Often, the only land available seems to have a major constraint to access or development - for example, contamination, repair / condition or land-locked; or simply, someone else owns it. One role of the planning system is to balance these competing needs.



This guide has been prepared to offer suggestions as to how you can work with the planning system so that your needs are seen, are considered as part of the development equation and, hopefully, gives you the tools to help tip the weights in the balancing act in your favour. The guide should be useful to any community group, or person, who wants to engage in the planning process with the purpose of achieving enhanced community ownership of assets and offers tips on how to play an active role in the process. It is not exhaustive as, in many respects, creative solutions are specific to each particular group, community, development and requirement and what works on one occasion may be the approach to avoid in another.

The purpose of this guide is not to arm you with material to prevent development simply because you as a community do not favour the developer's proposal. Quite the reverse; it seeks to provide you with the confidence to support development to help achieve your aims. It must also be remembered that by entering the planning process to secure your community asset you may be a developer too, just like any other developer - some will like and support your proposal, others may object to it...and they could use the suggestions here to seek to influence your proposals.

So, how do you find the right land for your use, and get through the planning process as smoothly as possible? How do you convince the decision-makers that yours is the best use for the land? How do you get involved in a process that seems to have no starting line, no finishing post and everyone else seems to be far better equipped than you to win? How can you compete against the well-financed and experienced developer?

The guide has been prepared on the basis that becoming involved in the planning process is a journey, rather than a race. Your destination is the crucial factor, and you want your travel to be as smooth as possible. Just like a car journey on a motorway, you will experience traffic jams, diversions, slow traffic, middle-lane drivers and speedy mavericks. Work collaboratively and you will eventually get there. Be open to new paths, different stopping points - on a journey, often the best viewpoints are gained when you take a diversion and the same is true with the planning journey - a different approach may just achieve a better quality result, or simply a better journey to the same destination.

This short guide seeks to take you along the planning road, introduces you to diversions and pitfalls with the intent of showing you that they can be opportunities rather than dead ends; paths to better development rather than preventing development. There are few short-cuts, but armed with this guide, you will hopefully find reaching your destination is a worthwhile journey along the planning highway.

In an ideal world, your involvement in planning would be along the planning motorway from start to destination, without any hold-ups. But, just like in the real world, there are always diversions and junctions which you have to encounter along the way. This Guide has been developed to allow you to come off at any junction, gives ideas on how to move forwards and in some cases provides examples or case studies to show how to resolve an obstacle before you can move forwards. You can then continue your journey, a junction closer to your destination.



# Route Map

## The Planning Journey in 10 simple Junctions

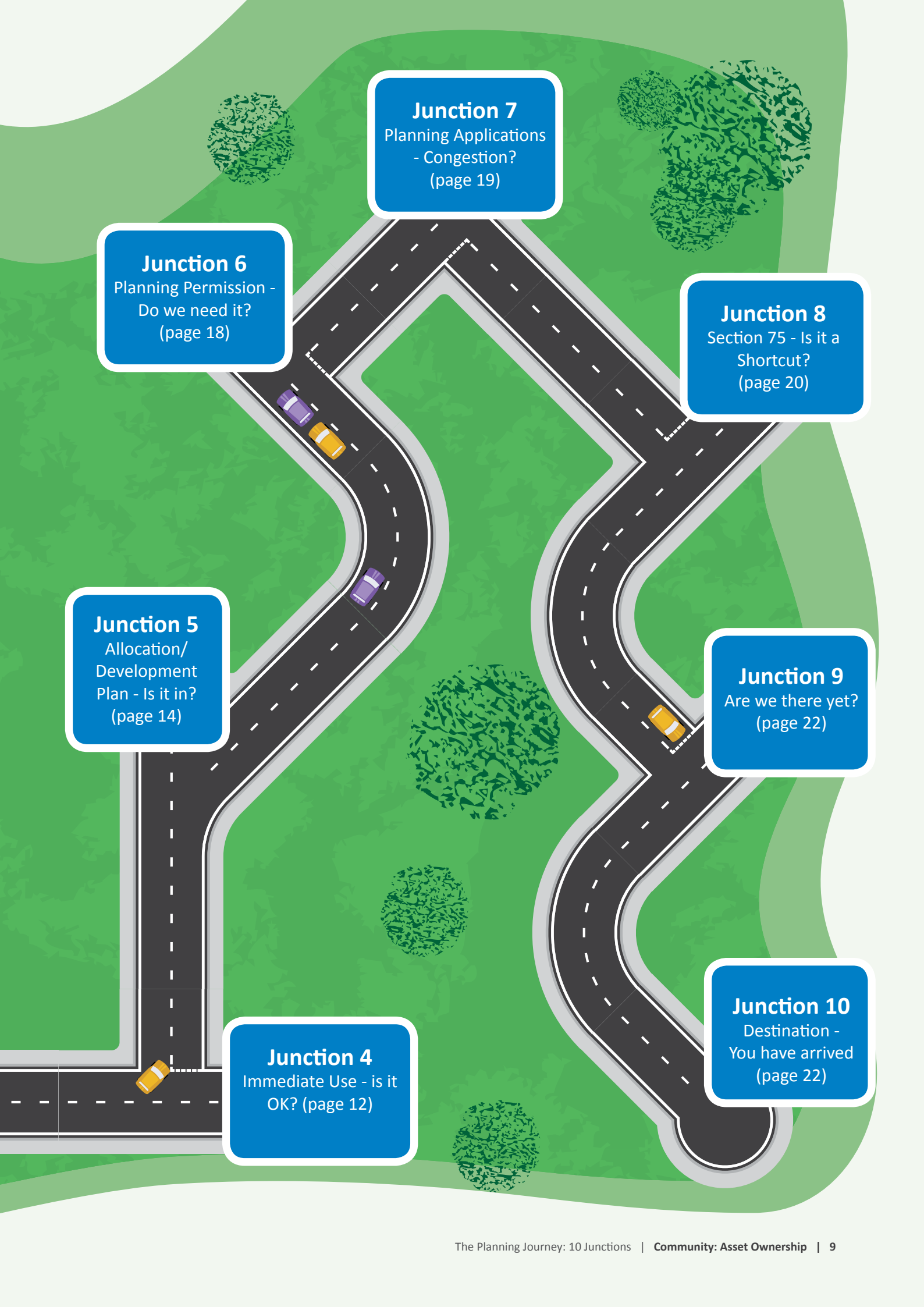
**Junction 1**  
Land - Where are we?  
(page 10)

The start of  
your journey

**Junction 2**  
Ownership: Can we  
get it? (page 10)

**Junction 3**  
The Battle or the War  
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**Junction 7**  
Planning Applications  
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Are we there yet?  
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**Junction 4**  
Immediate Use - is it  
OK? (page 12)

**Junction 10**  
Destination -  
You have arrived  
(page 22)



## Junction 1

Land - Where are we?

## Junction 1

In this guide, the term 'land' is used to cover many circumstances - it could be undeveloped or vacant land, open space or land with trees, land with buildings and hard surfacing, buildings or parts of buildings. In most cases, however, the same matter applies to all communities - finding the right land for your idea is not always as straight forward as you originally thought.

Community groups and organisations have a healthy supply of ideas for how their area should grow and develop to meet identified needs within that area; one constraint to implementing the idea is the lack of land which can be used to meet that need. Does it seem that all land within your area is owned by someone, used by someone or is being left vacant pending development by another developer?

Do walk about your area - look at all possible outcomes, be open to suggestion, talk to local companies, organisations, groups and your local Councillors - can you co-share; is there a 'surplus' area of land adjacent to another development; is there a building only in part use or in use for another purpose?


Do ask local estate agents and solicitors, who usually have a good grasp of what's available locally - and what yet may come to the market. You may get ahead of the game!

## Junction 2

You can get involved in the planning process without owning the land or building which you are interested in. However, most planning permissions 'go with the land' rather than being specific to any one developer, group or occupier. This means that if you get planning permission, the owner will have the benefit and you still may not be able to implement the permission and get your idea on the ground.

It is usual to secure the agreement of the land owner prior to entering into the planning process. Many developers acquire an 'option' on the land, which allows them to purchase or lease the land if planning permission is granted. This can allow all the planning work to proceed without the initial cost of purchasing or leasing the land / building. This is good practice, regardless of the type of developer as circumstances can always change and another person / group may benefit from all your work.

It can sometimes be difficult to find out who owns land or buildings. Further information can be found from [COSS](#) and at the [Community Land Advisory Service Scotland](#) (CLAS)



## Junction 2

Ownership:  
Can we get it?

## Junction 3

Think carefully about what you want to achieve and how you can achieve it. A planning application may be submitted to your local planning authority which initially as a community, or individually, people want to automatically object to it, as it is not the use / type of development that the community wanted for that land, or simply as you may be wary of change (how many people do you know who objected to new housing - only to eventually live in one of the houses they objected to?). But, through negotiation or carefully worded comment, you may lose one battle (planning permission may be granted), but will be better armed to win the war (you may achieve your actual goals).

Most developers would prefer a smooth journey through the planning process. Delay and uncertainty are major deterrents to development as they can have significant implications for funding, company operations and profit. It is rare that you will come across a developer who will not, under any circumstances, seek to meet the reasonable requests of a local community - the crucial determining factors are how reasonable the request, when it is made, how it is made and by whom.

How would you like to be approached? Early in the process so that you have time to change your proposal and consider financing or late in the day when changes may have significant issues? Constructively or demanding and presumptive? With ideas for change as a solution or as a list of demands which appear to be coercive? Of course, the best approach is to seek a collaborative way forwards. The wrong approach could result in you achieving nothing, or the developer supporting another group or person who is working collaboratively.

### For example

You are a community in a town and you used the car park of an industrial site, out of hours, to park your cars off road. This provided a safe environment for your cars and reduced on street congestion; a win:win for all. However, the industrial site closed down, a new developer purchased the site and has submitted an application for planning permission to erect housing. You will lose your (free) car parking and turning area. What can you do?

to the housing and to the loss of the car parking to the planners, your community legal council and the councillors - think. Do you have a right to it? Are you sure? It is all too easy to cast allegations about your rights, but unless you are sure, then the developer is likely to react strongly to your objection but to disregard your challenges. You have set out on the wrong foot! Developers are not obliged to take on board community views. There may also be other parties who take a more reasoned approach - the developer may decide to negotiate with them. Could you have engaged in a different way to achieve your desired result?

Think about the proposal from the developer's point of view. They want the development they have proposed. What can you do to make the process smoother and more certain? Are you really opposed to the housing - there maybe a greater need for that housing to meet the wider needs of the community, than your own private interests? Is it that you would simply like access to parking / turning areas? Could you support the housing and directly request the developer changes to a scheme which still provide what they want, whilst also achieving some additional parking spaces?

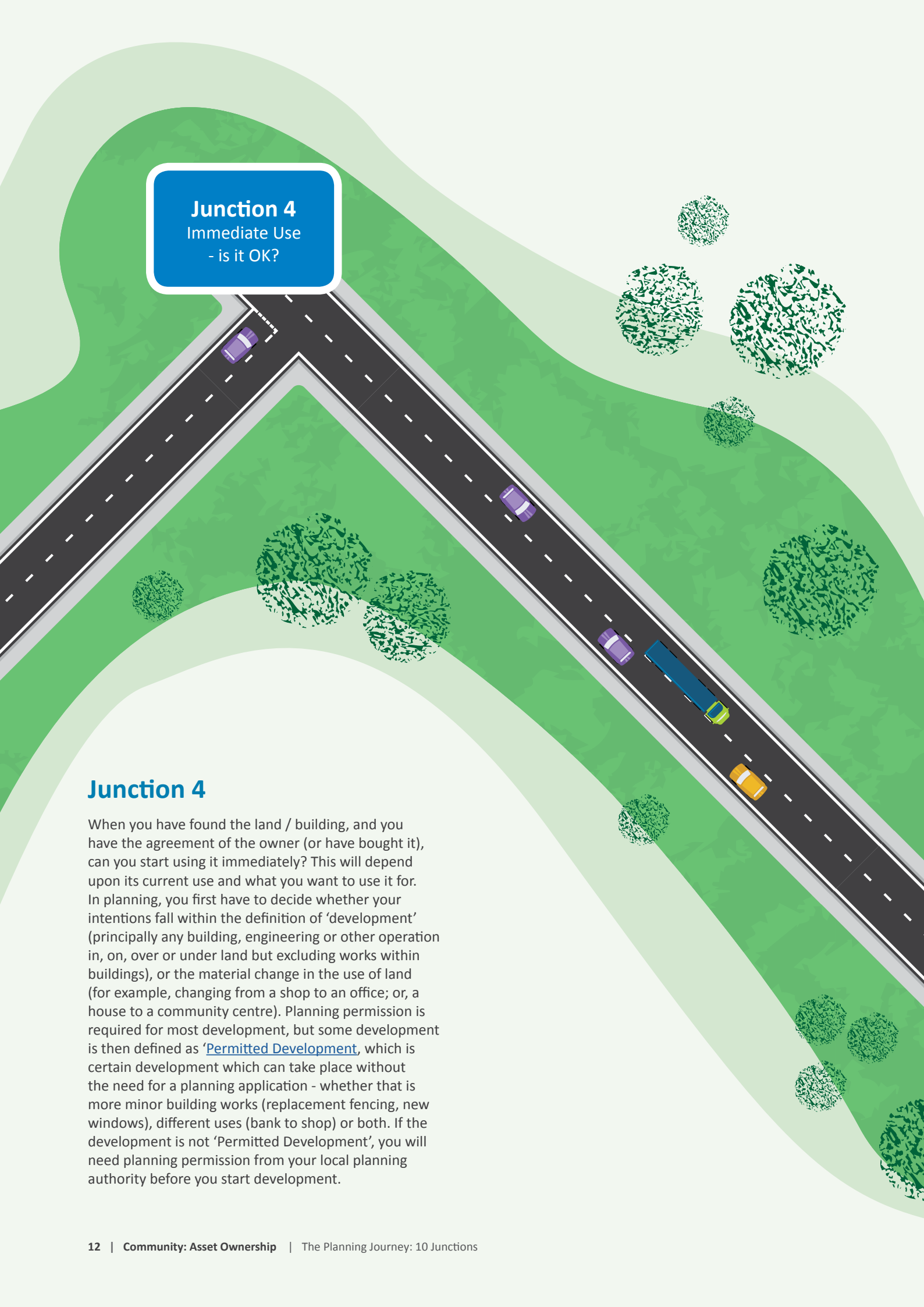
Consider supporting another developer's proposal if they can facilitate some of your requirements. Remember that developers do not have to accommodate you. Proposals cannot be automatically refused just because there are local community objections. The objections have to be based on sound planning reasons to have any merit. If you consider a development proposal objectively and accept that change is inevitable, then you may be able to think positively about the proposal providing it includes development / options which benefit you. This can be relatively simple changes, for example, changing one small retail unit in a redevelopment scheme to a community office to larger changes involving giving over land to the community to build / operate as affordable housing for its community. The developer may consider these changes are worthwhile to secure community support for the development.

### Example 2

You may have ear-marked a building as ideal for your community to use as a community hub - only to find that another party has bought it before you could secure it as a group. You may well feel put-out, especially if the building was previously owned by or used by a public body or community-based organisation (for example, the local Council, or a religious group) and you may consider objecting to the proposal in the hope that a refusal may result in the building becoming available to you. But is this the right approach? The developer may propose a private school or entertainments venue which may be able to accommodate the community's requirement when not being used by the developer, for example after school hours or during the day time. The landowner may even be prepared to offer specialist classes to the community, or free tickets to events for the community - your aims may be achieved but simply by different methods.

## Junction 3

A Battle or the War  
- What's winning?

A stylized illustration of a road junction. The road is dark grey with white dashed lines. It splits into two directions. On the left, a purple car is driving away. On the right, a purple car, a blue truck, and an orange car are driving away. The background consists of green hills and several green trees of varying sizes. A blue box with white text is in the top left corner.

## Junction 4

Immediate Use  
- is it OK?

## Junction 4

When you have found the land / building, and you have the agreement of the owner (or have bought it), can you start using it immediately? This will depend upon its current use and what you want to use it for. In planning, you first have to decide whether your intentions fall within the definition of 'development' (principally any building, engineering or other operation in, on, over or under land but excluding works within buildings), or the material change in the use of land (for example, changing from a shop to an office; or, a house to a community centre). Planning permission is required for most development, but some development is then defined as '[Permitted Development](#)', which is certain development which can take place without the need for a planning application - whether that is more minor building works (replacement fencing, new windows), different uses (bank to shop) or both. If the development is not 'Permitted Development', you will need planning permission from your local planning authority before you start development.

### Example 1

You may have been gifted an area of vacant land, situated between a group of existing houses on a housing estate. It is land which was part of the original open space when the estate was planned, but has not been properly used or maintained and is an eyesore. Your community needs a focus for the various groups to gather, to mix older people with newer residents of the estate and to improve the appearance of the area. This piece of land is ideal for use as a community garden. Do you need planning permission?

If all you want to do is clear the land and grow plants, sow seeds and mow lawn, probably not - the land is still open space and there will have been no development.

If you want to do the above, and erect planting boxes and seating, possibly not - the equipment may be temporary or the LPA may consider the development to be so small that it does not require permission.

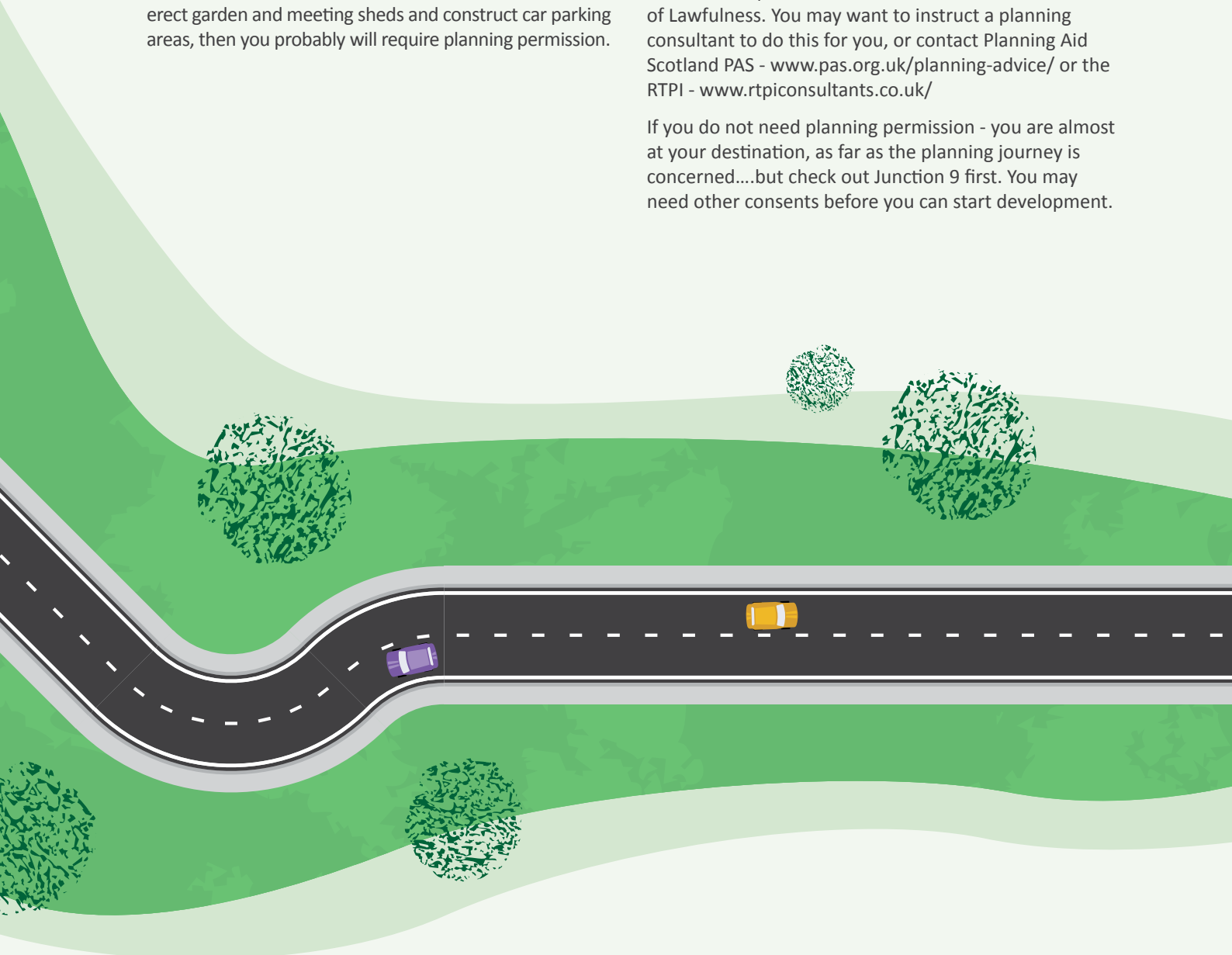
If you want to carry out more significant development - erect garden and meeting sheds and construct car parking areas, then you probably will require planning permission.

### Example 2


Your community has purchased an empty shop unit in your local group of shops, which was used as a hairdressers. You want to use to sell local produce made and grown by members of the community. You would not need planning permission as no change of use will take place. As the shop becomes successful, you want to make better use of the premises, to gain more income and create jobs - you want to make sandwiches and cakes in the shop, to sell cold. Still no change of use will take place. In time, you decide that you want to start operating a cafe, for the sale of hot and cold food to eat in and takeaway. Now you will need planning permission as a change of use will take place.

Your best approach is to contact your local planning authority and ask - it is best to give the LPA as much information as you can on the building and your proposal, so that they can give you the best response. Some LPA's now require payment for this advice, and some require the submission of a Certificate of Lawfulness. You may want to instruct a planning consultant to do this for you, or contact Planning Aid Scotland PAS - [www.pas.org.uk/planning-advice/](http://www.pas.org.uk/planning-advice/) or the RTPi - [www.rtpiconsultants.co.uk/](http://www.rtpiconsultants.co.uk/)

If you do not need planning permission - you are almost at your destination, as far as the planning journey is concerned....but check out Junction 9 first. You may need other consents before you can start development.







## Junction 5

Allocation/  
Development Plan  
- Is it in?

## Junction 5

Each LPA prepares a Local Development Plan for its area, the purpose of which is to guide decisions about the location, scale and appearance of development. For example, plans and policies to direct where and how much housing, employment, retail and open space should be provided, or should be retained. It should do this based on an assessment of need, identified through assessment and study for the whole plan area. It should identify how the LPA will seek to deliver this development, through allocation of land and implementation of its policies, to meet existing shortfall in provision of land uses, and how to address expected demand. The LDP has to be made in accordance with Acts and Regulations, and so can only address certain matters. It is not the vehicle to specifically address local community 'wants' on a more localised scale and can only address planning matters. More information on this can be found from the Scottish Government, PAS, RTPi or your local planning authority's website.

You may find that you have your idea, and have identified land / buildings but that you do not have planning permission and the land is identified for a different purpose in the LDP, or your use is not wholly in accordance with policies within the LDP (for example, it may be identified as employment land and you want to develop it for community-based affordable housing). This is not the end of your journey.

You can get involved in the plan-making process, but there are particular times during the preparation of the LDP when this is open to you. There are opportunities before the preparation of the Plan starts - for example, local planning authorities in some cases are holding local Charette consultation events to seek to engage with local communities to find out how they want their areas to be.

In the current LDP process, there are 3 formal stages when you can get involved -

- **the 'Call for Sites'**

When it starts preparing an LDP, the local planning authority can request landowners, developers etc to put forward sites they consider to be appropriate for development. Many LPA carry out an initial assessment of these sites when preparing their Main Issues Reports

- **the 'Main Issues Report'**

The MIR highlight the key changes that have occurred since the previous plan and show the authority's 'big ideas for future development'. [Scottish Government development planning](#) They provide the key opportunity for consultation and engagement in plan making but are not draft plans, instead providing preferred and alternative options for future development.

- **the 'Proposed Plan'**

The Proposed Plan should represent the LPA's settled view as to what it considers the final adopted content of the plan should be, having taken into consideration all representations submitted to the MIR.

\*Note, these stages are likely to change following the SG review of planning.'

The earlier in the overall process you get involved and the more information you can submit to the LPA to justify your case, generally the greater your chance at changing the allocation and / or the policy. Your representations should be evidence based - i.e. giving reasoned justification for your requirements. Simply that you, a community want it, is not sufficient - many different groups may want the same land / buildings for different reasons.

Talk to your local Councillors – they can point you in the right direction of who to discuss your proposals with in the planning, or other departments, of the local authority and may be able to help you research the information you need to justify your case. To be transparent in decision making, however, the Councillors may not be able to directly advocate on your behalf.



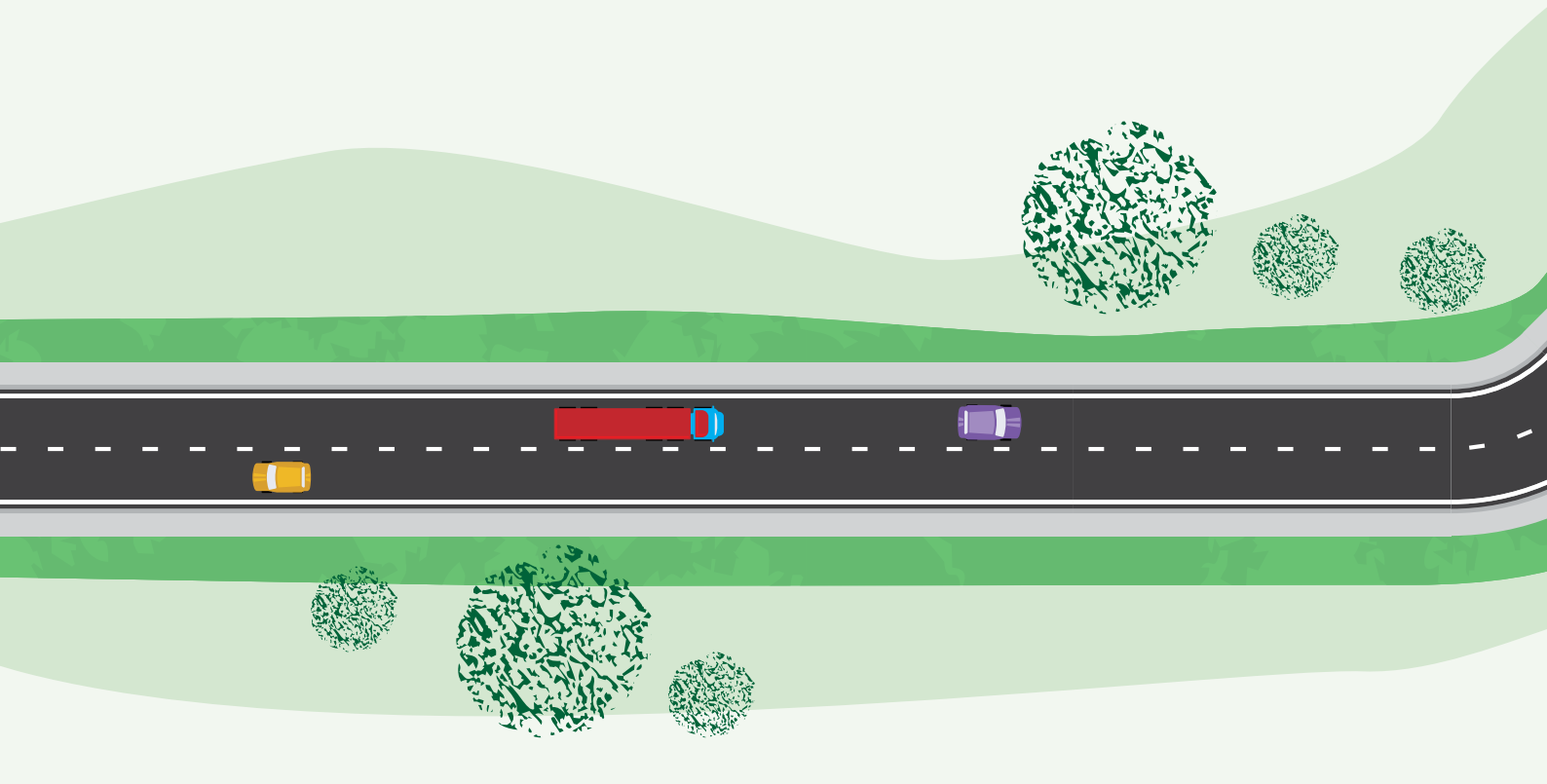
### Example 1

There may be land allocated for employment purposes in your area, which you want to purchase to erect much needed affordable homes / specialist housing for people in your community. This seems completely logical to you and something the LPA should just agree to as a matter of course. However, there are many parcels of land allocated for employment and many community bodies, house builders and developers who want to build much needed housing - should the LPA change all employment land to housing? What then would happen to the employment needs of the area - where would the jobs go?

It may be necessary, therefore, to find specific reasons why your particular case merits positive consideration - can you show a specific need for your type of housing, which is not being delivered elsewhere? Is there any over-supply of employment land in the council area so the change in use of the land you are interested in will not be problematic to job creation / retention overall? Is the land simply not suitable for employment - perhaps it has been allocated for years and years and has not been developed, perhaps it has been marketed and no business has been interested, perhaps it is surrounded by housing and industrial use is simply no longer appropriate.

### Example 2

On a similar basis, there may be an existing industrial estate in your community which has passed its prime. Perhaps you live in a mining village and the estate was developed to accommodate the needs of the mining industry, so the buildings have well passed their useful life. It is possible that the developer will appreciate your support to secure a mixed housing and employment use for the site so that funds from the new housing could be reinvested in a smaller employment site, to bring the buildings to modern standards, whilst releasing land to you for your housing needs. You may even be able to negotiate land for a community hall, a community garden or play area to meet your current needs, and not just those of the new larger community.



### Example 3

There are often many developers competing for housing allocations in their area. You may be able to support the allocation of one parcel of land, whilst objecting to others which may not provide your requirements. The views of a local community carry no more weight in planning decision making than any other views, it is the planning merit which carries weight. However, a well-rehearsed and evidenced case, based on planning issues, will be given full consideration. By supporting the allocation of one parcel of land, the promoter of that land (landowner or developer) may enter into agreement / partnership with you to help deliver your idea. But, do make sure that the developer is committed to the same timescale for delivery to suit your needs. Sometimes, it may be better to support the less preferable proposal to ensure earlier delivery of the development on the ground.

If you find your land / buildings and the LDP process has passed the Proposed Plan consultation stage, all is not lost. You should check the LPA's planning webpages to find out what other responses have been made - could you negotiate agreement with a developer who has made submissions to the plan? Can you enter into an agreement / partnership with that person to achieve your aims? Alternatively, can you submit an application for planning permission before the LDP is adopted so that existing policies apply.

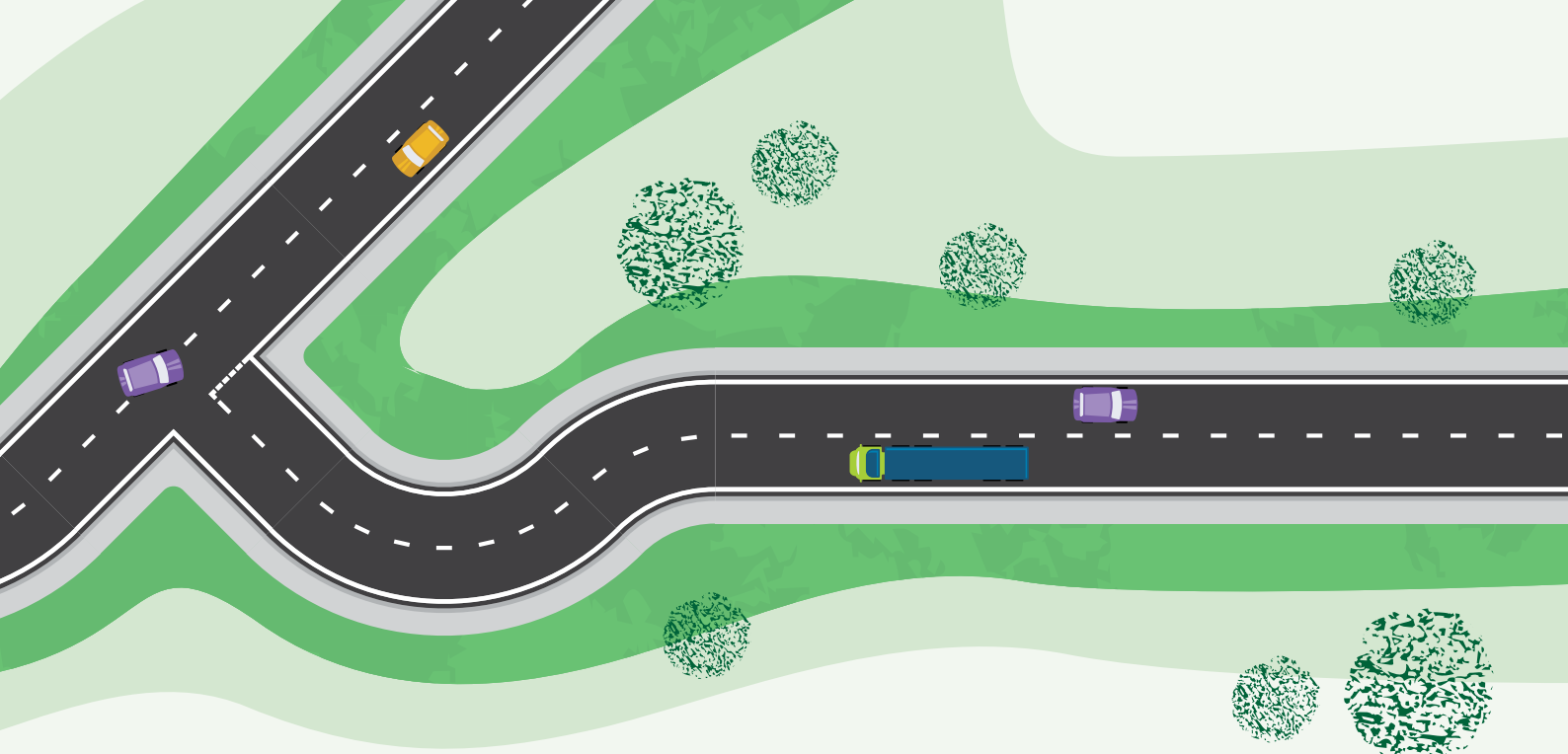
Currently, LDPs have to be reviewed every 5 years and preparation time normally takes at least 2 years. If you have no opportunities to make representations to the

current LDP, there is opportunity to become engaged in the preparation of the next plan; start building up your case as early and as fully as possible, and discussion with your LPA and Councillors. It will not be long before the opportunity to become involved in the process starts again, and you will be able to be fully prepared and ahead of the game.

You may want to instruct a planning consultant to explore your proposal further and make submissions on your behalf, or contact [PAS](#) or the [RTPI](#) for assistance.

Currently, the Development Plan is prepared following a statutory process under the Town and County (Planning) (Scotland) Acts, as amended, and it is a different process to the Community Planning Partnership Local Outcomes Improvement Plans (LOIP) of the Community Empowerment (Scotland) Act 2015, even though both are based on assessment of needs at a local level. The planning process is largely about development needs and how land should be used over the longer term, for the existing and future population, whereas the LOIPs are primarily directed at how primarily public services are delivered within an area to address social and economic inequalities. These are different matters.

The LDP can contain policies and proposals to retain land in a particular use or to encourage uses for certain areas of land (such as housing, retail, employment, and health / community uses), but can not direct benefit to any specific person, group or community or direct that any specific business or service operates from that land. The Development Plan is rarely specific



to a particular localised community as it addresses future development needs on a plan-wide basis (normally local authority wide) and relates to the most sustainable locations for any particular use; whereas community planning partnerships are community, need and priority specific. Currently, it can be difficult to interlink LOIPs and the Development Plan; that a community has prepared a LOIP does not necessary means that it will feed into the Development Plan.

This may change as part of the review of the planning process. In its recent Position Statement, the Scottish Government has stated that it is minded to propose a link between development planning and community planning, and that communities should be given rights 'to plan their own place'.

[Places, people and planning](#)

**Example 4**

Through the development planning process, it may be identified that there is a need to restrict the loss of building in community use, to ensure that there is an adequate supply of such uses to meet the needs of the existing community, and future occupiers. There may also be a requirement that a health centre be provided as part of a major new housing development. As the actual occupation of a building is not a planning issue, regardless of the need that may exist for new / expanded health centres, the Development Plan system can not, however, require that:

- a practice actually occupies the newly built health centre
- the health centre which occupies that building remains open, or
- any existing health centre increases the number of practitioners to accommodate the increasing number of people who wish to use the health centre.

An illustration of a road junction. A road curves from the top left towards the center, meeting a straight road that runs horizontally across the middle. A purple car is at the junction, a yellow car is on the straight road, and a red truck is further along. The road is flanked by green grass and stylized green trees. A blue callout box with rounded corners is positioned on the left side of the road.

## Junction 6

Planning Permission  
- Do we need it?

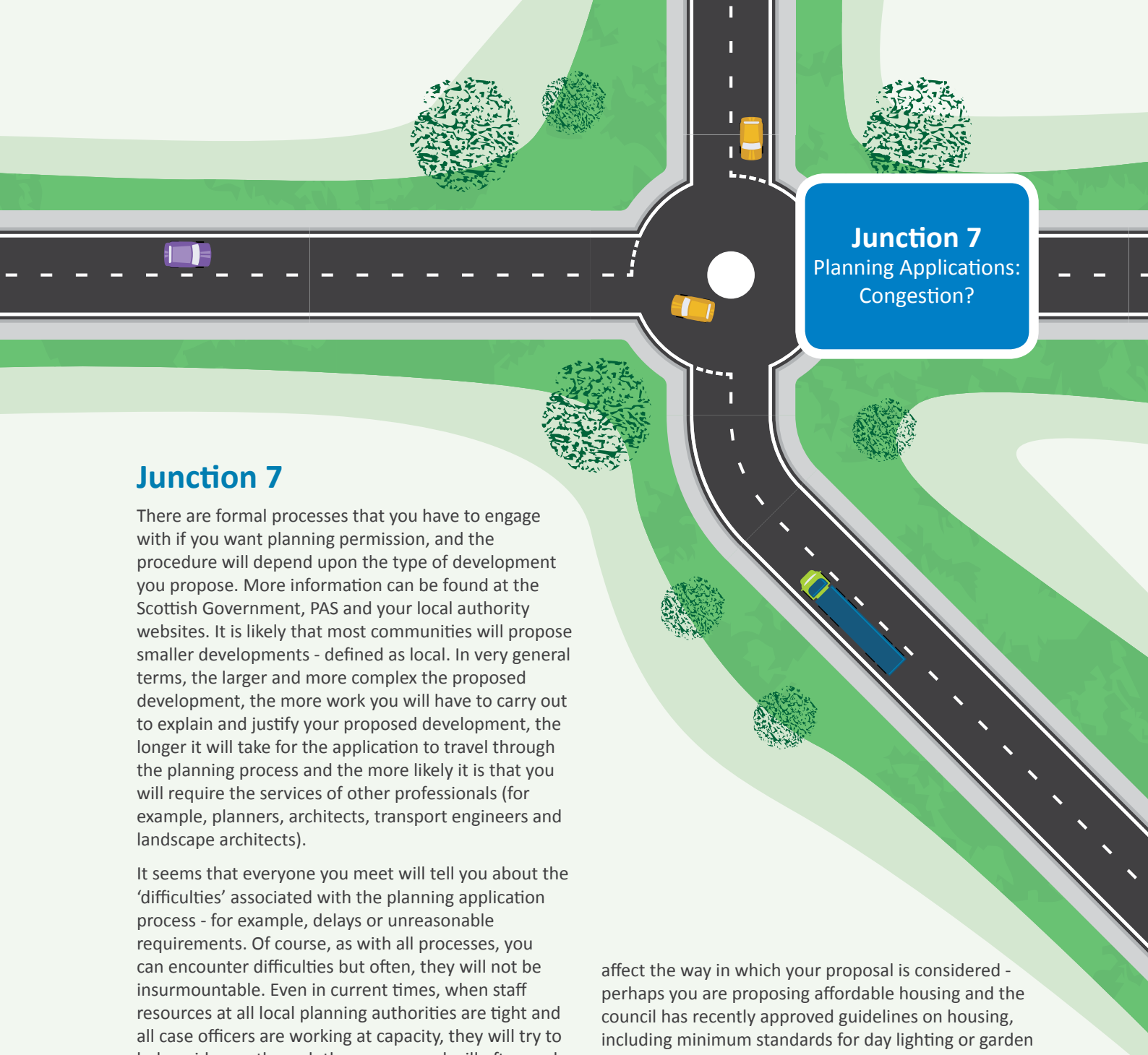
## Junction 6

The planning process applies to community groups in just the same way as it does any other developer, regardless of your proposal. You may be entitled to reduced [planning fees](#) Town and Country Planning, but all other requirements such as pre-application consultation for a 'major development' to the submission of fully detailed drawings and plans are the same for all developers. If you need planning permission - you may want to take advice from the local planning authority, PAS or instruct a planning consultant. For simple development, you may possibly only require services of an architect to prepare and draw the plans.

Take the rest of the community along with you - consult. A community group is no different to any other developer. Many objections to planning applications are submitted on a basis of fear of change, or simply not understanding the proposal. Taking time to consult the wider community, and not just your immediate group, may reap benefits - perhaps you can achieve written support for your proposal, or perhaps by notifying others, you may widen the interest in your group or find another group who would be interested in sharing your space.

Think also about your current and long term plans - make sure the permission is flexible enough to allow you to change / grow; make sure it meets your needs. For example, if you have identified a vacant church as a building suitable for use as a community hall, over the longer term, you may want to use it as a theatre / music venue. The large open vaulted space that you may think you do not need now, may well prove invaluable in the longer term; or, the car park which is attached to the building you are about to purchase may seem an unnecessary expense at this time and you may try to reduce the cost by excluding the car park from the purchase, but it may be a valuable extension area or appropriate site for affordable housing in the future - or a source of funding if you are able to secure planning permission on the spare land and then sell to another party.





## Junction 7

Planning Applications:  
Congestion?

### Junction 7

There are formal processes that you have to engage with if you want planning permission, and the procedure will depend upon the type of development you propose. More information can be found at the Scottish Government, PAS and your local authority websites. It is likely that most communities will propose smaller developments - defined as local. In very general terms, the larger and more complex the proposed development, the more work you will have to carry out to explain and justify your proposed development, the longer it will take for the application to travel through the planning process and the more likely it is that you will require the services of other professionals (for example, planners, architects, transport engineers and landscape architects).

It seems that everyone you meet will tell you about the 'difficulties' associated with the planning application process - for example, delays or unreasonable requirements. Of course, as with all processes, you can encounter difficulties but often, they will not be insurmountable. Even in current times, when staff resources at all local planning authorities are tight and all case officers are working at capacity, they will try to help guide you through the process and will often make suggestions as to how you can revise your proposal to get planning permission.

Try to get pre-application advice from your LPA. It is becoming more difficult to do so as resources are constrained, and you may have to pay a fee to get the advice, but generally it is preferable for a planner to review your proposal before you make your submission, rather than receiving it 'cold' as an application. Do submit as much information with your pre-application submission as you can - the better informed the case officer, the better the quality of the response and advice.

If you haven't already done so, contact your local Councillors and Community Council before you submit your application to seek their assistance and support. Contact details can be found on your local Council's website. They may also be able to point out potential pitfalls (for example, they will know about local sensitivities or other proposals which may

affect the way in which your proposal is considered - perhaps you are proposing affordable housing and the council has recently approved guidelines on housing, including minimum standards for day lighting or garden sizes). You will need to ensure that your proposal meets requirements in the Council's planning policy documents (normally the Development Plan and supplementary guidance), or give good reason why you should not. Remember, that the LPA has to take a consistent approach to all applications in its area. It cannot, for example, allow you to provide housing below its standards without good reason if it would not treat all other applications (including those from house builders and developers) in the same way.

If you encounter difficulties during your application, approach your local Councillors. To ensure transparency in the planning process, and to avoid conflict, your Councillors may not be able to be directly involved in your application and can not seek to influence the case officer's assessment of your application. They can, however, listen to your concerns and seek to direct you to people who can help, or facilitate a meeting with the case officer to discuss your concerns.



**Junction 8**  
Section 75 - Is it a  
Shortcut?

## Junction 8

You may have heard that developers can be made to pay for community infrastructure through the use of Planning Obligations, legal agreements or [Section 75 agreements](#) (they are, actually, all the same thing and are just called S75 in this paper, for ease of reference). This is true, but it's not the whole story. S75s are agreements between the Council and whoever has control over land / implementation of the permission and there are stringent tests set out governing the reasons why S75 can be used and all are related to the development being proposed. Otherwise the process could be abused if these tests were not in place - it is not right in planning terms to 'buy' a planning permission.

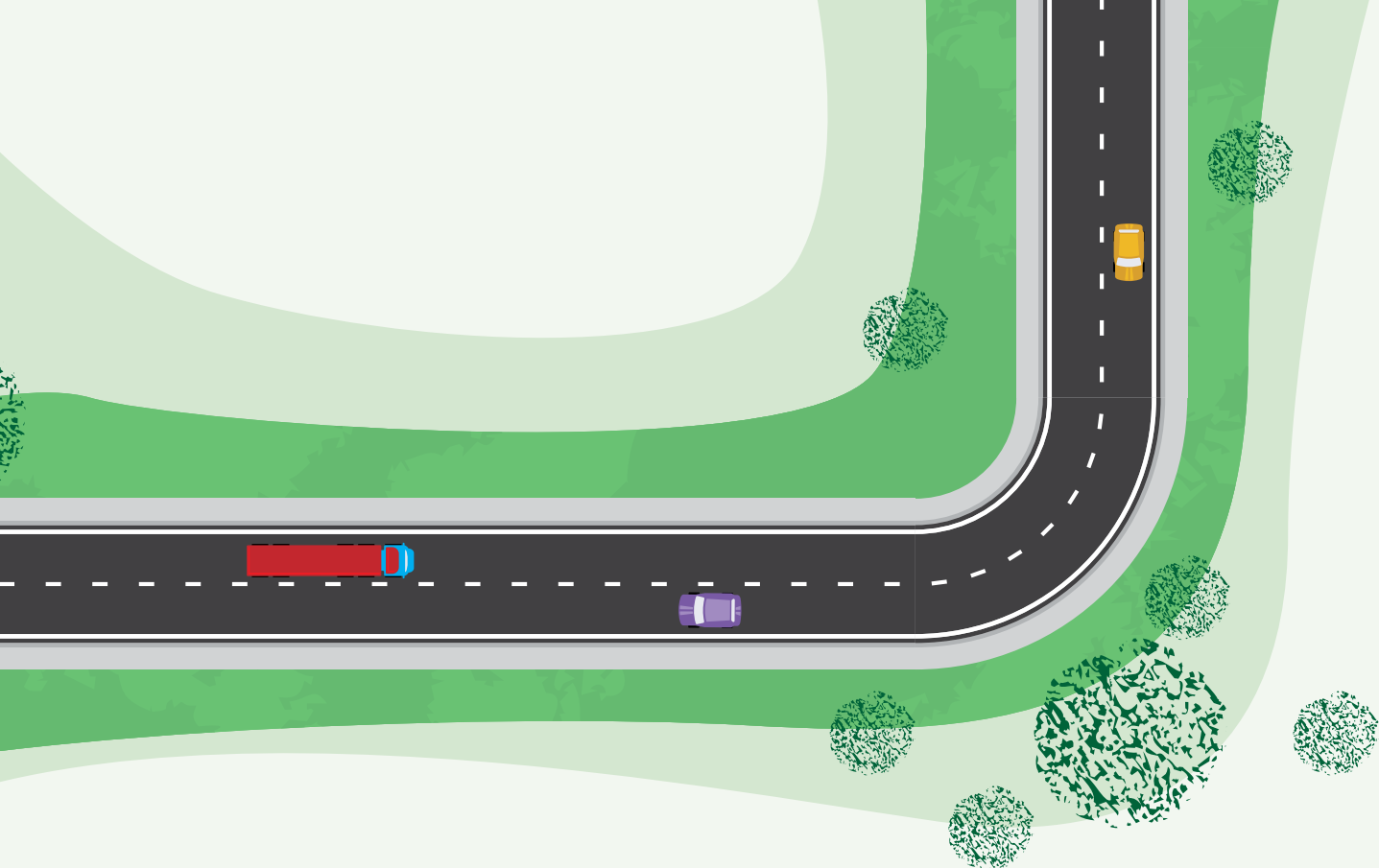
The tests are:

**Necessity** - is it needed to facilitate the development; could the development happen without it? For example, if the land is allocated generally for housing or is a redevelopment site within the built area of a settlement, it is likely in planning terms that housing suitable of accommodating all age types will be acceptable and the Council could not insist upon the site being developed in whole or part for housing for the elderly through S75, simply because a community group has stated its preference for this type of housing.

**Planning Purpose** - there has to be a planning reason to require a S75. The fact that a community wants it for housing for the elderly is not necessarily a planning reason. Are there policies in the Development Plan which require the provision of houses for the elderly? Has the Council identified a need for housing for the elderly? If the answer to these questions is 'no' it is unlikely that the S75 route could be used to 'force' a developer to provide such housing, even if they offer it. Conversely, if the site is allocated for housing for the elderly, based on reasoned evidence of a need for such housing, then controlling the occupancy by S75 is appropriate.

Also, if the housing development is being allowed for special reasons (for example contrary to its allocation for employment purposes as the Council is convinced by the special needs of the community to provide housing for the elderly), then the use of S75 is appropriate'.

**Relationship to proposed development** - The S75 has to relate to the proposed development - for example, a community has identified that it needs a community hall to address the existing lack of supply of a meeting area in its locality. Can the S75 process be used to force the developer proposing large retail development adjacent to that community to provide the hall? Only if the site includes the loss of community facilities as this is the only way that there could be a relationship to the proposed development. However, if the developer is proposing large scale residential development, then the S75 process could be used to require the provision of a community hall which could be of sufficient size that it also meets the needs of the new and existing community.



**Scale and Kind** - Following on from the above, the S75 could be used to require a contribution from the developer towards part payment of a new community hall, which would serve the existing and new community. The share required from the developer has to be proportional to the impact created by the new development only.

**Reasonableness** - A S75 has to be reasonable on planning grounds rather than what a community may think is reasonable and appropriate for a site. For example, to ensure that the planning system is transparent, any S75 which required the payment of financial contribution would have to ensure that the contribution would be directly related to the development, justified in terms of the use of the land and / or would overcome obstacles that would otherwise mean that permission should be refused.

The S75 route, therefore, is not a shortcut to getting what you want but it is possible that a developer will agree to the reasonable provision of community facilities, to secure the planning permission - this is the reason why effective negotiation is imperative and why you should seek to justify your requirements. You may want a community hub to be provided as part of a large housing development because you have identified a lack of such resources serving your community at present, and securing a new facility or financial contribution from a local developer to pay for a new facility may seem to you like a reasonable solution. However, why should the developer have to pay for something that should be / have been provided by someone else? The LPA should only secure such provision / contribution through a S75 to serve the needs arising from the development - and not to make

up existing shortfalls. You may find, though, that the developer may acknowledge that the community hall is the 'sticking block' to achieving planning permission, and through reasoned discussion and robust evidence, the developer may agree that the development will be better served by a community hub, serving the wider community and may provide the accommodation as part of the development.

## Case Study - Ellon

### Introduction :

Ellon Castle and Gardens lie centrally within the small Aberdeenshire town of Ellon, which is midway between Aberdeen and Peterhead, to the west of the A90. The Castle sits on the Ardgith Hill. It was originally built in the 16th century with various additions throughout the 16th and 17th Century including the creation of the Castle Gardens. The old Castle subsequently fell into ruin and a new castle was commissioned in 1845.

The site has significant cultural importance, being a Scheduled Monument, containing a number of listed buildings and trees protected by a Tree Preservation Order.

Ellon Castle Gardens is an established Scottish Charity and a company limited by guarantee, with a group of Trustees establishing a Board active in restoring the Gardens on behalf of the people of Ellon and has opened up the gardens to visiting members of the public. The vision of ECG is to 'conserve and develop this wonderful, tranquil and historic garden as a resource for the community of Ellon and beyond'.

*Continued on the next page*

The Castle and Gardens, associated woodland, former playing fields and a number of flats for rent have been transferred to the ECG over the past 10 years, from land within the ownership of private companies and Aberdeenshire Council. The initial transfer was gifted under a Section 75 agreement pursuant to the granting of planning permission APP/2009/2460 for 247 residential units and associated infrastructure and access.

### Planning Process

In the Aberdeenshire Local Plan 2006 and a separate Development Brief for the site, different parts of the land were subject to :

- an allocation for 75 houses,
- white land designation, and
- identification as 'Protected Area' (the Castle Gardens and associated woodland).

There were a number of constraints to development, however, and there were legacy issues relating to matters such as open space provision and management. All stakeholder parties, therefore, appreciated that the planning process would be challenging and that an innovative strategy was required to achieve a successful planning permission and a high-quality development on site.

As a means of resolving the issues relating to the site, and to meet the diverging views of the local community, the developers (Barratt Homes and Scotia Homes) formed a working relationship with other stakeholders, including the Princes Trust, Aberdeenshire Council (including local Councillors), Ellon Community Council and representatives of the local community, early in the planning process. This focus group was essential to ensure that:

- information was appropriately filtered to all interested parties,
- all parties 'bought in' to the process and sought the same end results
- goodwill and trust could be achieved between all parties.

Planning permission was eventually granted for a greater number of houses – 247, justified partly on the basis of the package of developer contributions, including a mechanism for delivery of the restoration and long-term maintenance of the Castle gardens (formation of the Castle Gardens Trust), through a Section 75 agreement. Aberdeenshire Council accepted that pragmatic compromises had to be taken in order for the development to proceed financially, and not be rendered unviable due to overly onerous requests. One such compromise was on the level of provision of affordable housing – the Council accepted that the value of establishing the Charitable Trust and the handing over of housing units to that trust for open market rent to fund the maintenance of the gardens would equate to approximately 50% more than would

be required in standard percentage terms for the site when compared with the commuted sum requirement from the development.

The S75 was innovative in that it gifted land and a commuted sum for the upgrading of that land to ECG, together with flats to enable the rent from those properties to be used to upgrade / upkeep the grounds. To off-set this cost to the developer, an allowance was made on the amount of affordable housing that had to be provided by the developer, ensuring 'neutral-cost'.

The development is now completed and the Castle and gardens are being successfully restored and managed by the local community. Aberdeenshire Council has recently agreed to transfer ownership of an additional area of land to further enhance ECG's aspirations for the land.

The Scottish Government awarded its 'Quality in Planning and Designing Places Award 2008: Delivering and Assessing Pre-Application Community Engagement'. The Judges stated :

*We were extremely interested to hear about the proactive approach of the partners to encourage the use of masterplanning to create the sustainable regeneration of the town. It was encouraging to hear that this project managed to promote participation through engagement with the local community, stakeholders and particularly commendable with those who would not normally have been involved in such a scheme. It is acknowledged that the approach is not just a 'one-off' for Ellon but can be adapted for any village to urban city extensions.*

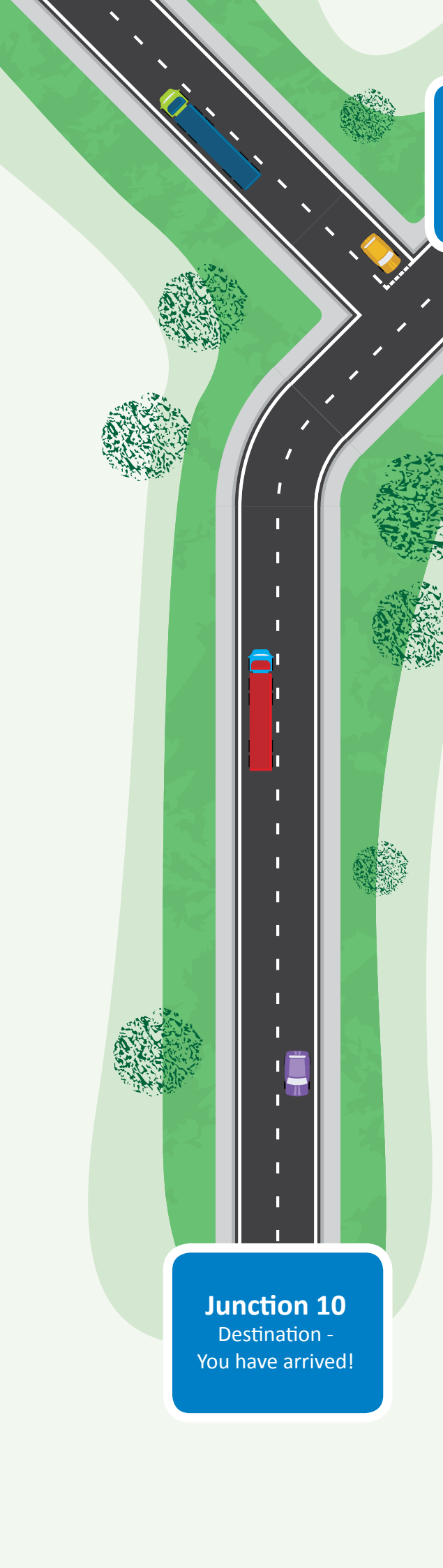
### Key Benefits

- Planning permission for more houses than the Local Plan originally envisaged, meeting housing needs and ensuring a viable development.
- Asset ownership for the local community via the ECG to ensure the long term management of existing, proposed and Castle ground open spaces.
- Income stream for local community (houses and land as community-owned assets).

### Key Factors to Success

- Early engagement by all parties
- Accepting flexibility and innovative approach by Aberdeenshire Council re: Section 75 requirements
- Trust / good working relationships
- Acceptance of limitations and requirements of all parties
- Collaborative working throughout the course of planning and build periods
- Time and financial commitments by all parties
- Good leadership and filtering of information by all interested parties
- No quick-fix





**Junction 9**  
Are we there yet?

## Junction 9

The planning process can often seem lengthy and obstructive; but with patience and understanding, you can get there! Remember, though, it is just one process towards you using the land or buildings. Other consents may be required - whether from the landowner, other consents from the local authority or other statutory body.

If the building is Listed at [Historic Environment Scotland](#), you will need Listed Building consent if you propose works which will affect the character of the listed building (for example any demolition, removal of original features or extension). If it lies in a Conservation Area, consent may also be required for certain works; and you may have no permitted development rights. Your proposal may involve trees which are covered by a Tree Preservation Order, and consent may be required for works to the trees.

If in doubt, or to get further information, contact your LPA, [PAS](#) or instruct a [Planning Consultant](#)

## Junction 10 : Destination - You have arrived!

- You have planning permission and all requirements / conditions / limitations within that permission have been met;
- You have all other necessary LPA consents, including Listed Building Consent and Conservation Area Consent;
- You have the necessary approval from other local authority departments, including building control;
- You have the necessary consent from other statutory undertakers, for example Scottish Water, SEPA, Historic Environment Scotland;
- You have the agreement of the land owner and any other parties which may have interest in the land / buildings.

Now you have arrived at your planning destination, you can continue with your plans. Good luck with the rest of your journey.

**Junction 10**  
Destination -  
You have arrived!





**COMMUNITY  
OWNERSHIP  
SUPPORT SERVICE**

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