

# Chapter 6. Planning instruments for POPS in Mediaspree area, Berlin

Based on the case of Teheran-ro, the previous chapter elaborated how the public sector in South Korea addresses the challenge of public space provision and management by using planning instruments to promote cooperation between the public and private sectors. This chapter continues to explore the second research question, based on the case of Mediaspree area, where the public sector has exercised several instruments to engage the private sector in the provision and management of POPS (see Table 6.1). In the following sections, each of these instruments will be analysed.

Table 6.1 Planning instruments for POPS in Mediaspree area (Part I)

Indirect planning instruments	Formal planning instruments	Urban land-use planning <ul style="list-style-type: none"> <li>· Preparatory land-use planning</li> <li>· Legally binding land-use planning</li> </ul>
		Landscape planning <ul style="list-style-type: none"> <li>· Landscape programme</li> </ul>
	Informal planning instruments	Urban design competitions and master plans <ul style="list-style-type: none"> <li>· 1992 Competition for Hauptbahnhof Berlin/Spreeufer and 1993–1994 master plans</li> <li>· 2000–2001 Expert review procedure of Ostgüterbahnhof</li> <li>· 2010–2011 Call for ideas for Kreuzberger Ufer</li> </ul>
		Urban planning and development concepts <ul style="list-style-type: none"> <li>· 1999 Area planning concept and 2001 concept for Spreer-aum Friedrichshain-Kreuzberg</li> <li>· 2009 Kreuzberg Ufer planning concept</li> <li>· Urban development concept Berlin 2030</li> </ul>

Table 6.1 Planning instruments for POPS in Mediaspree area (Part II)

Indirect planning instruments	Informal planning instruments	District development planning
		Environmental atlas
		1995 Design guideline
	Financial instruments	INTERREG II C Waterfront Urban Development
		Stadtumbau West Kreuzberg-Spreeufer
Direct planning In- struments	Formal planning instruments	Non-coverable area
		Easement
		Public easement
		Urban development contract
		Green stipulation
		Public and public authority participation

Source: Author's own table.

6.1.     Formal and indirect planning instruments

As discussed in Chapter 4, Mediaspree area faces the twin challenge of securing public access to the riverside as well as public space within the neighbourhood. Rather than repurchasing properties to respond to public needs, the public sector has employed a number of planning instruments to engage the private sector. Even though POPS are still a relatively unpopular concept in Germany, the research reveals that they are increasingly found in cities where public-private cooperation is essential. A number of these POPS can already be found in Mediaspree area. This section analyses a set of formal planning instruments that indirectly affect POPS in Mediaspree area, including urban land-use planning and landscape planning. Urban land-use planning in Germany is subdivided into two categories: the preparatory land-use plans and legally binding land-use plans. Landscape planning consists of several plans; the focus here is placed on landscape programmes, which are legally defined in statute.

### 6.1.1. Urban land-use planning: Preparatory land-use plan

In Germany, the major instrument of urban planning legislation is urban land-use planning.<sup>1</sup> The Federal Building Code states its function and the responsible party:

The function of urban land-use planning is to prepare and control the use of land within a municipality for buildings or for other purposes, in accordance with the Federal Building Code.<sup>2</sup> The adoption of urban land-use plans falls within the responsibility of the relevant municipality.<sup>3</sup> It prepares urban land-use plans as soon as and to the extent that these are required for urban development.<sup>4</sup>

Since urban land-use planning forms part of a multi-level system of planning, it must be consistent.<sup>5</sup> Hence, urban land-use plans created by municipalities should be ‘brought into line with the aims of comprehensive regional planning’.<sup>6</sup>

The process of urban land-use planning is divided into two-stages involving two types of plan: the preparatory land-use plan and the legally binding land-use plan.<sup>7</sup> To a large extent, both are governed by similar rules; however, each has a different spatial scope, scale, detail, legal form and legal effects (Pahl-Weber & Henckel, 2008). The legally binding land-use plan can only be designed on a small scale; since it does not cover the whole territory of a city, a structure plan for the entire municipal area is necessary.<sup>8</sup> In response, the preparatory land-use plan (hereafter FNP) outlines the type of land uses that would arise for the whole territory of a municipality in accordance with the expected urban development that will meet the municipality’s anticipated demands.<sup>9</sup> The FNP is significant for urban development since it establishes ‘the fundamental decisions of a community on how and for what purposes [...] the land available can and should be beneficially and appropriately used’

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1 Battis/Krautzberger/Löhr, BauGB § 1 Rn. 1.

2 § 1 (1) BauGB.

3 § 2 (1) BauGB.

4 § 1 (3) BauGB.

5 Spannowsky/Uechtritz, BauGB § 1 Rn. 60.

6 § 1 (4) BauGB.

7 § 1 (2) BauGB.

8 Battis/Krautzberger/Löhr, BauGB § 5 Rn. 1.

9 § 5 (1) BauGB.

(Pahl-Weber & Henckel, 2008, 79). Its contents are described in § 5 (2) of the Federal Building Code. In particular, the FNP may emphasise the following: 'Green spaces, such as parks, allotment gardens, sports grounds, playgrounds, campsites and bathing areas, cemeteries (no. 5)'.

The above list of green spaces is by no means intended to be comprehensive. In fact, the term refers to all green spaces, whether public or private, that are 'incorporated in built-up areas and which therefore have a direct impact'.<sup>10</sup> The purpose of green spaces in this context is to help break up building masses, to improve microclimate or to fulfil the user needs for recreation and leisure.<sup>11</sup> In that sense, green spaces are differentiated from 'areas for agriculture and forest' (no. 9) as well as from 'areas for sport and play facilities' (no. 2).<sup>12</sup> Public bodies charged with planning tasks must adapt their planning proposals to the FNP to the extent that they have no objections to it.<sup>13</sup>

The FNP for Berlin is a general development plan that includes planning goals and proposals for the entire area of the city and serves as the foundation for more comprehensive planning concepts for strategic development areas and other sub-sections of the city (SenSW, n.d.-c). Out of eight different strategic planning objectives, the one that is relevant to POPS is worded as follows: 'Protection of open space, provision of recreational areas, a well-balanced urban ecology' (SenSW, n.d.-d). Berlin's FNP comprises of a zoning map and written policies. The zoning map indicates six different areas: land for building purposes, land for community facilities, land for supply and disposal plants, transport, open space and water, and areas set aside for the protection of the environment (SenSW, 2015b). Open space is then subdivided into green space (including field/meadow, park, sports ground, cemetery, water sports, allotment garden and campsite), forest and agricultural land. The written policies, meanwhile, explicitly mention public access to open space (SenSW, n.d.-e):

To achieve the interlinking network of open spaces shown in the FNP, the legally binding land-use plans, which are drawn from the FNP, are required to establish public rights of way through sports grounds and areas of allotment gardens. Where special building areas for water sports are designated,

10 Battis/Krautzbeger/Löhr, BauGB § 5 Rn. 20; EZBK, BauGB §5 Rn. 36.

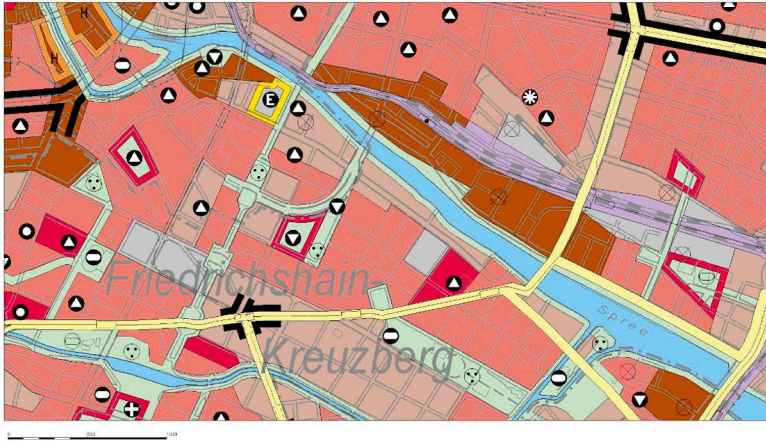
11 EZBK, BauGB §5 Rn. 36.

12 Battis/Krautzbeger/Löhr, BauGB § 5 Rn. 20.

13 § 7 BauGB.

public access, in particular to lake and riverbank, has a high priority. Public access to lakes, rivers and canals is a general long-term objective of the FNP.












Figure 6.1a FNP of Berlin, Mediaspree area, 2015



Source: SenSW, 2015c (accessed on June 18, 2018).

Figure 6.1b FNP of Berlin, Mediaspree area, 2015 (legend)

Green Areas, Water

	Green area		Field or meadow
	Parkland		Sports
	Cemetery		Water sports
	Allotments		Camping
	Woodland		Agricultural land
	Water		

Source: SenSW, 2015c (accessed on June 18, 2018).

Figure 6.1 is part of the FNP zoning map, showing the Mediaspree area. As shown in green, the FNP requires green space on the riverside along with public access to the Spree. As the FNP is binding for the municipality, this gives justification to planning officers that they can demand POPS on the riverside.

### 6.1.2. Urban land-use planning: Legally binding land-use plan

The legally binding land-use plan (hereafter B-Plan) is the second stage plan, on a smaller scale than the FNP (1:500 or 1:1000 for B-Plan; 1:25.000 for FNP). The FNP serves as the foundation for the development of B-Plans.<sup>14</sup> In this way, the underlying representations of the FNP become more clear and concrete.<sup>15</sup> The B-Plan is the primary instrument for putting local government planning into action: it covers part of the municipality in terms of scale and is adopted in the form of a byelaw or municipal statute (Pahl-Weber & Henckel, 2008). It contains legally binding stipulations for urban development,<sup>16</sup> whose diverse contents are described in § 9 (1) of the Federal Building Code, ranging from the category and density of building and land use to areas for community amenities. The following representations are of particular importance for this research: ‘Plot areas which may or may not be built on (coverable and non-coverable area)’ (no. 2); ‘public and private green spaces, such as parks, allotment gardens, sports grounds and playgrounds, campsites and bathing areas, cemeteries’ (no. 15); ‘spaces to be encumbered with public right of way’ (no. 21); and ‘green stipulation’ (no. 25).

When it comes to new construction, nature conservation and landscape management may not always be the primary goal. Nevertheless, both must be taken into account. The establishment of green spaces can serve to offset the loss created by construction planned in the B-Plan.<sup>17</sup> According to no. 15, ‘green spaces – such as parks, allotment gardens, sports grounds and playgrounds, campsites and bathing areas, and cemeteries – can be established in the B-Plan, at which point it should also be determined whether they are public or private green spaces’<sup>18</sup>. Crucially, the term “green spaces” is an um-

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14 § 8 (2) BauGB.

15 Entscheidungen des BVerfGEs 48, 70.

16 § 8 (1) BauGB.

17 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 89.

18 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 82.

brella term that refers to areas that are free of solid buildings.<sup>19</sup> They do not have to be completely or predominantly green; the deciding factor is that their actual use corresponds to the category defined as green space in the Federal Building Code.<sup>20</sup> Sports grounds and playgrounds are good examples. One remarkable fact, at this point, is that non-coverable area does not belong to the category of green spaces.<sup>21</sup> In fact, plot area, which may or may not be built on, is also a separate element in no. 2.

The various types of private green spaces include private home gardens or riverside parks on private land. When establishing private green spaces, the interests of the property owner should be considered, as this can restrict his/her rights.<sup>22</sup> In addition, public right of way can be established for planning reasons both in building and non-building areas.<sup>23</sup> This grants the public the right to cross or use private property. In turn, green stipulation regulates matters relating to greening the area, such as designation of an area for planting trees, shrubs and any other kind of greenery, as well as the preservation of existing trees.

B-Plans in Mediaspree area have been established since the 1990s. During the era of division, the West side belonged to the “industrial area”. After reunification, district officials wanted this area to become mixed-use, as supported by the newly issued FNP of Berlin. B-Plans were newly established in order to set legal framework for mixed-use area. Areas classified as open space in the FNP shall not be identified as building land in a B-Plan, except for small community facilities that serve neighbouring residential areas (SenSW, n.d.-h). As the FNP delineates green space along the riverside, B-Plans are required to secure land for green space.

### 6.1.3 Landscape planning: Landscape programme

Landscape planning is a planning instrument for nature conservation and land management. Its tasks include ‘specifying the purpose of nature conservation and landscape management for the respective planning area and identifying applicable requirements and measures for achieving such purposes,

19 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 82, 85.

20 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 85.

21 EZBK, BauGB § 9 Rn. 126.

22 EZBK, BauGB § 9 Rn. 128a.

23 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 117.

also with regard to plans and administrative procedures whose decisions may affect nature and landscape in the planning area'.<sup>24</sup> Plans should contain information about the requirements and measures for the implementation of the concrete goals of nature conservation and landscape management, in particular: 'For avoiding, mitigating or eliminating adverse effects on nature and landscape' (no. 4a); 'for conserving and developing recreational value of nature and landscape' (no. 4f); and 'for conserving and developing open spaces in settled and non-settled areas' (no. 4g).<sup>25</sup> Landscape planning thus forms the basis for the implementation of impact mitigation regulation and the improvement of both the quantity and quality of open space, especially regarding its recreational function (Böhm et al., 2016).

Landscape planning is found at several levels. In the context of POPS in Mediaspree area, the most relevant is the landscape programme (hereafter LaPro) of Berlin. The LaPro determines how Berlin wants to protect and develop nature and landscape in the city and processes the interests of the environment, nature and landscape optimally for B-Plan (SenUVK, 2017). It is binding on all authorities in Berlin whose fields of work include area development, construction projects, urban design competitions or similar tasks (SenUVK, 2017). As early as 1994, the Senate Department for Urban Development and Housing (hereafter the Senate) and the City Council had already decided to develop the riverside in Berlin as part of public green corridors of city-wide importance to be delivered through the FNP and the LaPro (Der Senat von Berlin, 2008). The LaPro and the FNP complement one another (SenSW, n.d.-f). For riverside within the city centre, emphasis is placed on making attractive areas for living and working, with public promenades for pedestrians and cyclists (Der Senat von Berlin, 2008).

Out of the four different programme plans, the programme plan for recreational use is especially relevant to this research (see Figure 6.2). Its aim is to enrich Berlin with open spaces for all, because for a growing city like Berlin, it is crucial to secure green space and a green network (SenUVK, 2017). There are two main focuses: one on the supply of open space (i.e., improving both the quantity and quality of open space), and the other on the development of an attractive green network to connect green spaces. In terms of supply of open space, empirical studies show that the maximum distance people travel daily from place of residence to green and open space is 15 minutes on foot, and the

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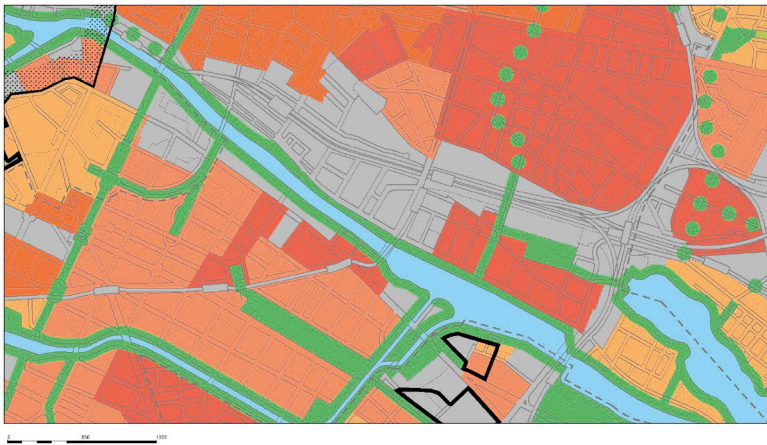
24 § 9 (1) BNatSchG.

25 § 9 (3) no. 4 BNatSchG.



minimum size of green space is 0.5 hectares (SenUVK, 2017). An important method for determining deficits in the provision of open space is to compare the actual situation with the original guide value (SenStadt, 2016). According to the guidelines of Deutscher Städtetag in Berlin, 6–7 m<sup>2</sup> per person is optimal (SenStadt, 2016). In pursuit of this target, the LaPro distinguishes four priority levels for the improvement of open space supply in Berlin's residential area (SenStadt, 2016).

Figure 6.2 LaPro plan of recreational use, 2016



Source: SenSW, 2016 (accessed on June 18, 2018).

As shown in Figure 6.2, these priority levels are marked with four different colours. The study area is partly surrounded by the Level 1 area (in red). Level 1 is the area characterised by block development by Gründerzeit (SenStadt, 2016). As this building structure leaves little room to create or extend open space, this area is worst equipped with open space (SenStadt, 2016). Equally, demand for green space is especially high, as private or semi-public spaces are only available to a limited extent. Examples of the measures suggested for public, semi-public and private spaces in the Level 1 area include: ‘(a) to increase possible uses and to improve the quality of the existing open space and infrastructure areas; (b) to preserve the existing open space; (c) to connect green and open spaces; (d) to install a green courtyard, roof and façade;

and (e) to improve the quality of the street' (SenUVK, 2016b). Figure 6.2 also highlights a general lack of open space in the residential neighbourhood.

Areas marked in green in Figure 6.2 indicate green spaces and green corridors. As early as 1994, the LaPro envisaged an attractive network of walks and cycle paths to enhance the use of recreational green spaces and parkland (SenUVK, n.d.). Areas in grey are outside the residential area, including commercial and mixed-use areas, with a focus on key functions, business and services (SenStadt, 2016). The main issues here include: '(a) the development of open spaces and the potential for recreation; (b) the development of concepts for recreational use; (c) the development and qualification of small, district-related green spaces and open spaces; (d) the development of road connections; (e) protective planting adjacent to residential use and recreational use; (f) greening roof and façade; and (g) the planting of trees on suitable surfaces' (SenUVK, 2016b).

Together, both urban land-use planning and landscape planning delineate green networks along the riverside in Mediaspree area. In addition to these formal planning instruments, there are several informal planning instruments that indirectly influence the provision of POPS in the area and that justify why planning officers can and should demand open space for the public from private landowners along the riverside.

## 6.2. Informal and indirect planning instruments

Several informal instruments have designated open space on the waterfront in Mediaspree area. By doing so, they have emphasised the need for both open space within the area and public access to the river itself. These informal instruments vary from master plans to design guidelines. In the following section, the most relevant instruments will be introduced and explored in relation to the provision and management of POPS in Mediaspree area.

### 6.2.1. Urban design competitions and master plans

The state of Berlin recognised high development potential in the area around the former main station shortly after German reunification (SenStadt, 2001b). An **urban design competition *Hauptbahnhof Berlin/Spreeufer*** was held in 1992 for the area between Michaelbrücke and Rummelsburger Platz to restore and redefine the area (SenStadt, 2001b). The architectural firm Hemprich Tophof

Architekten won the competition with a plan that envisaged developing the area primarily for commercial use (Bezirksamt FHKR von Berlin, 2004d). Other main elements included a riverbank promenade and the creation of a riverside park, thereby exploiting the potential of the waterfront location (Bezirksamt FHKR von Berlin, 2004d). Based on this plan, the architect created a **master plan Hauptbahnhof/Spreeufer** in 1993. Its aim was to upgrade the surrounding area of Ostbahnhof as a location for services and offices (Bezirksamt FHKR von Berlin, 2004d).

The architect proposed a urban quarter with high density and uniform building height, while at the same time establishing a spatial relationship between the former main station and the river Spree (SenStadt, 2001b). According to the master plan, a 15-metre-wide riverside promenade would make the river on the Friedrichshain side accessible between Jannowitzbrücke and Oberbaumbrücke (SenStadt, 2001b). A park between the river and the East Side Gallery was also defined (SenStadt, 2001b). In 1994, the Senate Department of Urban Development and Environmental Protection commissioned the revision and in-depth study of the first prize of the competition from 1992 (Bezirksamt FHKR von Berlin, 2004d). In this **master plan Mühlenstraße**, the location of the main road was investigated, and the development of the waterfront area was discussed (Bezirksamt FHKR von Berlin, 2004d).

In 2001, Anschutz Entertainment Group (hereafter AEG), the Senate and the district of Friedrichshain-Kreuzberg carried out an **expert review procedure Ostgüterbahnhof** for the former East-side freight yard to develop further planning ideas for the area (SenStadt, 2003). The expert review procedure was conducted in a cooperative way as it involved several stakeholders – representatives of project developers, the Senate, the district, neighbours, owners affected and representatives of political parties in the district council – who met several times to clarify questions and formulate notes for further process (Bezirksamt FHKR von Berlin, 2005c). The jury gave recommendations for the revision of the winning plan by Hemprich Tophof Architekten, which includes Arena-Vorplatz, a public park between the East Side Gallery and the river, as well as the opening of the East-Side-Gallery for the improved connectivity to the river. A revised **master plan** was then developed based on the original plan. What is important is that the area should be developed in accordance with the objectives of the master plan and the FNP. For this purpose, the FNP was changed in parallel to allow for the development of an attractive and lively urban quarter for leisure, shopping, working and living (Bezirksamt FHKR von Berlin, 2005c). The master plan itself became part of the *Spreeraum*

*Friedrichshain-Kreuzberg* concept and has thus formed a planning basis for the city of Berlin (Bezirksamt FHKR von Berlin, 2005c). It also formed the basis for B-Plan V-3 (Bezirksamt FHKR von Berlin, 2005c).

As key principles for the riverside planning – such as 50 metres of minimum distance between new buildings and the riverbank – were supported in the 2008 referendum, a **call for ideas *Kreuzberg Ufer*** was launched in 2010 by the initiative *Mediaspree Versenken* for the future development of the Kreuzberg-side waterfront between Schillingbrücke and Lohmühleninsel. The focus here was on three properties in particular due to their large size: Behala, Zapf-Areal and Supermarkt (Initiativkreis Mediaspree Versenken! AG Spreeufer, 2012). Key themes included the following: ‘Desires for future use – green space, housing, etc. and who builds what for whom?’.

As a model project for direct public participation, residents, experts and non-professionals were given an opportunity to develop ideas, strategies and approaches that would enable sustainable development of the riverside (Jeutner, 2011). During this 11-month period, the exhibition ran in parallel, which allowed visitors to present their ideas and comments (Jeutner, 2011). In the end, several proposals were presented and discussed, and the decision as to which proposals were recommended to the district for further development was made by three juries: a resident jury, an expert jury and voting from attendees (Jeutner, 2011). With 71% of the points awarded, the project *StadtspreeKiezspree* from the U-Lab of the Technical University of Berlin achieved the best score (Jeutner, 2011). The main idea for the project is that this area should be observed from two different perspectives: the neighbourhood and the city (Initiativkreis Mediaspree Versenken! AG Spreeufer, 2012). At the same time, the project sought to remedy the imbalance between these two levels by, for instance, linking open space along the river Spree (Initiativkreis Mediaspree Versenken! AG Spreeufer, 2012). Several solutions were developed to meet the conditions and requirements of each site, including repurposing unused barges as riverbanks (Initiativkreis Mediaspree Versenken! AG Spreeufer, 2012).

## 6.2.2. Urban planning and development concepts

When making urban land-use plans, the result of urban planning and development concepts must be considered.<sup>26</sup> Urban land-use plans and urban

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26 § 1 (6) no. 11 BauGB.

planning and development concepts are interconnected and indirectly affect the provision of POPS. Once adopted by a municipality, they have binding effects on public authorities. Below, three concepts are elaborated that emphasise the provision of open spaces and their connection along the river in Mediaspree area: (a) area planning concept and concept Spreeraum Friedrichshain-Kreuzberg; (b) Kreuzberg Ufer planning concept; and (c) Urban development concept Berlin 2030.

The **area planning concept** is an informal planning instrument that complements the FNP by covering a wider range of planning topics (SenSW, n.d.-g). While making the FNP, the result of the area planning concept should be considered.<sup>27</sup> Once the FNP is established, the concept translates the abstract policies of the FNP to their specific sub-areas – city centre, South-East Berlin, West Berlin and North-East Berlin – and demonstrates how new developments may be integrated with the existing urban fabric (SenSW, n.d.-g). The Senate first introduced the area planning concept for the city centre in 1999. The city centre is subdivided into five areas, one of which covers Mediaspree area and delineates a green corridor along the river. The relevant goals here are as follows (SenSW, n.d.-j): ‘Redefinition of the riverside as public space through strengthening the riverbank; and creation of new green spaces and green networks in the immediate vicinity of the Spree’.

The **Spreeraum Friedrichshain-Kreuzberg concept** is a partial update of the area planning concept specifically for Mediaspree area. It was developed in 2001 via close collaboration between the district of Friedrichshain-Kreuzberg and the Senate (SenSW, n.d.-i). It represents an important basis for planning and development within the area and has a legally binding effect on all relevant stakeholders (SenStadt, 2005b). Both the district and the Senate recognised the need to open the previously inaccessible part of the riverside (Der Senat von Berlin, 2008). In response to this, the concept defines a large part of the riverside as green space, irrespective of ownership, and the desire for a several-kilometre-long promenade with viewpoints (Der Senat von Berlin, 2008). Relaxation and leisure opportunities for the adjacent densely built and underserved urban areas would also be improved through open space (Der Senat von Berlin, 2008). Indeed, the district has been successful in making the promenade publicly accessible over the course of investor development activities (Der Senat von Berlin, 2008).

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27 § 1 (6) no. 11 BauGB.

The **Kreuzberg Ufer planning concept** is an update of the area planning concept and the *Spreeraum Friedrichshain-Kreuzberg* concept from 1999/2001 for the section of the Kreuzberg-side riverbank between Schillingbrücke and Köpenicker Straße 10a. An update was necessary since the view on design and planning had changed since 2001, especially as a result of the referendum of 2008 (Bezirksamt FHKR von Berlin, 2009b). In the context of this study, the applicable area includes five properties: Behala, Exil/Sage, Heeresbäckerei, Zapf and Supermarkt, which constitute plots with high development potential on the Kreuzberg-side waterfront. The basic ideas include (Bezirksamt FHKR von Berlin, 2009b) the following: ‘Spatial and functional linkage of surroundings and redefinition of the riverside as public space’ (2–3).

To improve this spatial and functional linkage, Spreefenster – a visual axis forming a visual bridge between the existing quarter and the river – is to be created with a width of approximately 20 metres (Bezirksamt FHKR von Berlin, 2009b). A completely closed building structure is not desired (Bezirksamt FHKR von Berlin, 2009b). Moreover, a footbridge extension of Brommystraße is planned (Bezirksamt FHKR von Berlin, 2009b). In terms of the redefinition of the riverside as public space, the district office strives for a 30-metre-wide empty strip of riverbank, 20 metres of which will be publicly accessible (Bezirksamt FHKR von Berlin, 2009b). Although the 2008 referendum confirmed that a 50-metre-wide distance between buildings and the river was desirable, this could not be met. Wherever spatial and functional linkage is not possible due to, for instance, existing buildings on the riverbank, public access will nevertheless be delivered in line with previous planning principles (Bezirksamt FHKR von Berlin, 2009b).

The **urban development concept Berlin 2030** provides city-wide development perspectives for selected urban locations in Berlin (SenSW, n.d.-k). The concept describes six qualities of Berlin as its unique selling points and sets out eight strategies for what the city is trying to achieve. Finally, 10 transformation areas are given geographical priority, providing a tangible framework to implement these strategies on the ground (SenSW, 2015a, 6). One of these strategies is called “City and green growing together”. This strategy suggests that green and other open public spaces of Berlin will have been created to a very high quality and well connected and accessible to everybody by 2030 (SenSW, 2015a).

Mediaspree area is located within one of the named transformation areas: Stadtspreet and Neukölln. The strategy map defines public space along the riverbank. According to the concept, in 2030, Mediaspree area will be a diverse



and appealing location to live which offers green spaces and recreation areas, especially along the river Spree. Plans for the Spree corridor will elicit debate; nonetheless, this area will have become a model for modern urban and spatial planning thanks to the innovative participatory procedures and “self-made-city”-style urban development (SenSW, 2015a).

### 6.2.3. District development planning

District development planning (hereafter BEP) is a central instrument of district planning (Bezirksamt FHKR von Berlin, 2007a). In terms of scale, it finds itself between the city-wide FNP and the parcel-sharp B-Plan. It gives shape to and, at the same time, influences the FNP (SenStadt, 2011). It aims to identify and spatially allocate the space required for different uses within a district: for social infrastructure, for green space and recreational areas, for industry, for shopping centres and retail, for public space and transport infrastructure, as well as for housing (SenStadt, 2011). BEP is binding on public authorities, and it must be considered when preparing for the B-Plan.<sup>28</sup>

*Figure 6.3 District development planning for Friedrichshain-Kreuzberg district, utilisation plan, 2005*



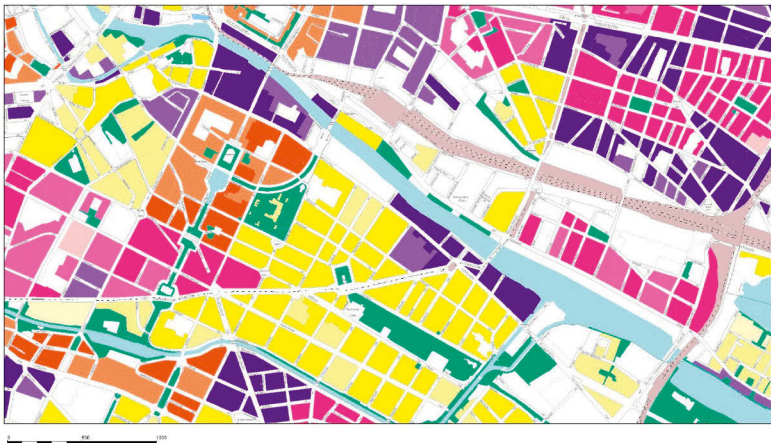
Source: Bezirksamt FHKR von Berlin, 2005d.

28 § 4 (2) AGBauGB.

The district of Friedrichshain-Kreuzberg developed its own BEP utilisation plan, published in 2005 and accompanied by a final report and detailed plans. The report contains explanatory statements for six individual sectors – demography and housing, social infrastructure, open space-related recreation, nature conservation, transportation, and retail – as well as the basis for the establishment of the utilisation plan. Regarding open space, the final report highlights the lack of green space within the district and that the deficit must be removed so that the district can become a liveable inner-city location (Bezirksamt FHKR von Berlin, 2007a). Subsequently, the supply of public playgrounds is discussed. One of the plans in detail focuses solely on green and open space. It identifies possible locations for public playgrounds within the district. A green network along both sides of the river is also indicated on the BEP utilisation plan (in the form of dots). Importantly, the utilisation plan only delineates publicly owned green and open space, which is why a large part of the riverside is not shown in green (see Figure 6.3) (Bezirksamt FHKR von Berlin, 2007a).

#### 6.2.4. Environmental atlas

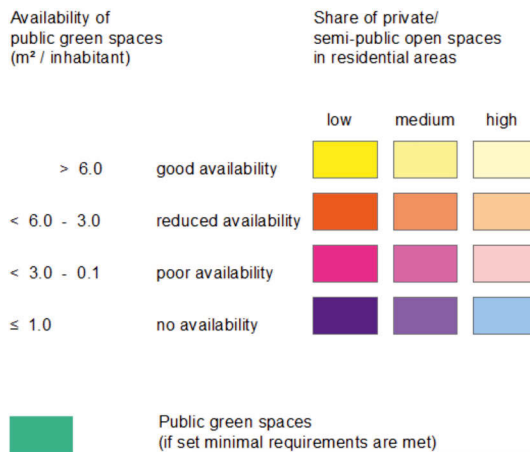
*Figure 6.4a Environmental atlas and its legend, availability of public, near-residential green spaces, 2016*



Source: SenSW, 2017 (accessed on June 18, 2018).



Figure 6.4b *Environmental atlas and its legend, accessibility of public, near-residential green spaces, 2016*



Source: SenSW, 2007 (accessed on June 18, 2018).

The environmental atlas is an extensive work comprising around 80 topics and hundreds of maps on the themes of water, soil, air, land use, noise, traffic, energy, climate, human and environment (SenSW, n.d.-b). It provides a comprehensive and differentiated description and assessment of the urban environment (SenSW, n.d.-b).

When it comes to the availability of public, near-residential green space, the map presents green areas, forests and residential areas with 12 different colours that are distinguished by coverage of public green space and proportion of private or semi-public open spaces. The centre of Berlin, including the area of study, is generally characterised by high building density and a small proportion of open spaces (SenSW, n.d.-a). Other than the riverside park and some green space within the residential area, the surrounding area is mostly coloured with pink and violet (see Figure 6.4). This means that less or no green space is provided and that the proportion of private or semi-public open space is very low. As a result, green space is in great need in the area, and the environmental atlas offers good evidence to planning officers to argue that the riverside should be open space for the general public (Interviewee 5).

### 6.2.5. Design guideline

The riverbank is understood as an important open space in the centre of Berlin and is therefore delineated in both the FNP and the LaPro as a continuous, adjoining open space. In principle, public access to the waterfront is considered essential. One study on the design of open space on the waterfront was conducted between 1995 and 2003 to establish a framework for the future development between Treptower Park and Charlottenburger Schlossbrücke (SenStadt, 2003). In the form of a design guideline, the framework provides the Senate, districts and investors with an orientation of designing building projects along the river Spree (SenStadt, 2003). The design guideline, entitled *Die Innere Stadtspre*, identifies five types of riverbank – focal point, promenade, street, connection and parkway – and describes the characteristics of each, adding recommendations for the correct type to use along different stretches of the riverbank. The most common type suggested in Mediaspree area is promenade, an example of which is given below.

The Osthafen is a former industrial port on the Friedrichshain side of the river in Mediaspree area. Publicly accessible open space on the waterfront is to be created here. The design guideline suggests a promenade version 4 – a version specifically for port areas. The guideline states that a 20-metre-wide promenade is desirable to maintain the quayside atmosphere without the need for railings (SenStadt, 2001a). The promenade should be covered by a hard covering (i.e., concrete paving) and be equipped with seating facilities and a shady spot beneath a group of trees (SenStadt, 2001a). Lighting on the riverbank is not recommended (SenStadt, 2001a). The area should also be seamlessly connected to the existing promenade in front of the Speichergebäude (SenStadt, 2001a).

As the example above shows, the fundamental goal of the design guideline is to secure space on the riverbank and to connect open space across districts (SenStadt, 2003). On the one hand, the uniform design of the bank shall clarify the public character of the riverbank, regardless of its actual ownership; on the other hand, it shall signal its function as a superordinate route (SenStadt, 2003). This is intended to counteract the unwanted character of private space, such as a “front garden” (SenStadt, 2003).

In sum, master plans, urban planning and development concepts at both the city and the district levels, as well as the BEP, delineate a green network along the riverside in Mediaspree area. The environmental atlas underlines the existing lack of green and open space in the area, which justifies its pro-

vision. Moreover, the design guideline sets out a framework for designing the riverside for public access and use. In one way or another, then, these informal instruments indirectly influence the provision of POPS in Mediaspree area since they give justification to planning officers seeking to demand open public space from private landowners along the riverside.

### 6.3. Financial and indirect instruments

Financial instruments help achieve goals; in this case, the goal is a continuous riverbank that is accessible to all. Below, two funding programmes are explored that supported several relevant measures at two different levels. They suggest that securing financial resources is one of the main concerns and that engaging private investors is inevitable.

#### 6.3.1. INTERREG II C – Waterfront Urban Development

INTERREG (officially European Territorial Cooperation) is a series of five programmes that began in 1989 to support transnational cooperation between regions, towns and cities within the European Union (Interreg, n.d.). In Germany, the Senate took part in EU-Programme INTERREG II C – Baltic Sea Region – Waterfront Urban Development between June 1998 and June 2001, whose common theme was the development of differently structured waterfront conversion areas (SenStadt, 2002). Out of a total project budget of €265,000, €115,000 (43.4%) were raised by the state of Berlin, and the remainder was financed through EU subsidies. As a result, a waterfront development plan for Berlin (the hereafter WEP) was drawn up in 2002.

The WEP presents the development prospects of four waterfront areas in Berlin – Spreemündung Sophienwerder, Hamburger und Lehrter Güterbahnhof, Friedrichshain-Kreuzberg, and Schöneeweide – as they have favourable development chances even under changing demographic, social and economic conditions (SenStadt, 2005b). Thanks to the proximity to the historical centre and its role in joining East and West Berlin after the fall of the Berlin Wall, the Friedrichshain-Kreuzberg waterfront is given particular emphasis (SenStadt, 2005b). The guiding principle for this part of the waterfront stands for 'the sustainable transformation of a commercial and harbour district, for an innovative water-oriented urban design, for overcoming borders and barriers (the former Berlin Wall, the river and

the main road), and for the coexistence of traditional and modern ways of living and working' (SenStadt, 2005a, 14). Specific measures include the following: 'Connecting individual sections of the riverbank to a network of public space; continuous riverbank, access to water and Spreebalkon as a viewpoint; development on the Kreuzberg side in harmony with the existing block structure; Lohmühleninsel as a public green area, possibly with cultural uses; and bridges to extend Manteuffelstraße and Brommystraße to interlock both sides of the banks' (SenStadt, 2005b, 28–29).

What is interesting here is that the city officials see themselves as moderators – rather than builders – who initiate and control the relevant procedures together with private actors (Der Regierende Bürgermeister Senatskanzlei, 2002). In this sense, private investment is seen to provide impetus to the waterfront conversion project in Friedrichshain-Kreuzberg, while the state of Berlin only creates the overarching framework and conditions and only supports when absolutely necessary (Der Regierende Bürgermeister Senatskanzlei, 2002).

### 6.3.2. Stadtumbau West – Kreuzberg-Spreeufer

Stadtumbau West is a funding programme for urban restructuring in the former West Germany. Starting in 2004, it has financed urban restructuring measures at five different sites in the former West Berlin (Städtebauförderung, n.d.), one of which is the riverbank on the Kreuzberg side.

The area spans approximately 100 hectares over a stretch of around two kilometres of the river (Bezirksamt FHKR von Berlin, 2007b). The actual process of urban restructuring in Kreuzberg began in 2006 with a project budget of €4 million until 2010 (Städtebauförderung, n.d.). The aim of the Stadtumbau in Kreuzberg was to open, develop and urbanise the riverbank on the Kreuzberg side (Städtebauförderung, n.d.). Of the eight key aspects that define the overarching objectives for urban restructuring in this area, the following is of interest in this study: '(a) urbanising the riverside on the Kreuzberg side; (b) linking both sides of riverbank – Kreuzberg and Friedrichshain – as parts of a prosperous economic area; and (c) opening and developing the riverside for the district and city' (Bezirksamt FHKR von Berlin, 2007b, 12–13).

To achieve these objectives, numerous projects and measures – ranging from technical refurbishments to various upgrades of public space – were implemented with the support of this funding programme. As part of a step-

by-step process, the focus up to 2008 was on the improvement of the living environment (Städtebauförderung, n.d.). Between 2008 and 2010, the development and opening of the underused riverside came to the fore; since 2010, the focus has been on supporting private investments, such as new construction of residential areas and the conversion of historic industrial buildings (Städtebauförderung, n.d.).

In summary, the planning instruments named in the preceding sections have indirectly influenced the provision of POPS along the riverbanks in Mediaspree area. Crucially, these instruments are interconnected and build a basis for the direct planning instruments that will be explored below.

#### 6.4. Formal and direct planning instruments

In the previous four sections, it was shown how various planning instruments indirectly affect POPS in Mediaspree area, shaping the decision-making environment and justifying their creation in the first place. This section will explore planning instruments that directly influence the provision and management of the four case study POPS in Mediaspree area (see Figure 7.15). In terms of type of planning instruments for POPS, the case studies include non-coverable area, easement, public easement, urban development contract, green stipulation, and public and public authority participation. All are formal planning instruments as defined in statutory provisions. Some are stipulations from the B-Plan, while others are independent instruments. Although one could argue that the B-Plan itself relates directly to sites, since not all its stipulations influence POPS, those that are directly relevant are treated as an individual instrument here.

In short, non-coverable areas, easements and public easements regulate the location of POPS, whereas urban development contracts determine who pays for the provision and maintenance of POPS and how much they pay. Green stipulation is an instrument for greening POPS. Public and public authority participation is an instrument for incorporating local opinion and knowledge around POPS into the planning process. In the following section, six regulatory planning instruments that directly influence the provision of POPS will be explored.

### 6.4.1. Non-coverable area

Coverable area is the area on which a building may be built. This is specified in the Federal Land Utilisation Ordinance, the most significant component in German building and planning law (Pahl-Weber & Henckel, 2008). It regulates the representation and designation of category of land use, density of land use, building method and design, and coverable area, thereby supplementing the Federal Building Code. Coverable area is determined by building line, set-back line and coverage depth, as detailed in the B-Plan.<sup>29</sup> Especially when it comes to a qualified B-Plan, stipulation on coverable area is essential. If a building line is established, a building must be built along this line.<sup>30</sup> If a set-back line is set, a building or part of a building must not extend beyond the limit.<sup>31</sup> Coverage depth also establishes a limit that may not be exceeded (Pahl-Weber & Henckel, 2008). Non-coverable area is any area outside the coverable area; this is where POPS can be created.

### 6.4.2. Easement

Easement defines which rights the landowner must grant to others.<sup>32</sup> Easement is regulated in the Civil Code. There are different types of easements, one of which is right of way. Right of way can be granted simply by contract between two parties – one whose land is burdened (servient land) and one whose land benefits (dominant land) – or by easement. In principle, a contract between two parties is sufficient. However, entering right of way in the land registry as easement ensures that the right remains valid regardless of changes in ownership. The owner of servient land does not always have to bear. Considerate use<sup>33</sup> can be demanded by the owner of servient land, if necessary. The owner of servient land can also demand a fee from the owner of the dominant land. Moreover, the owner of the dominant land is legally obliged to maintain and repair any footpaths on servient land<sup>34</sup>.

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29 § 23 (1) BauNVO.

30 § 23 (2) BauNVO.

31 § 23 (3) BauNVO.

32 see § 1018 BGB.

33 see § 1020 BGB.

34 see § 1021 BGB

Public right of way established in the B-Plan is another example of easement if entered into the land registry. The establishment of public right of way is intended to grant the public the right to cross or use someone else's land, even against the will of the owner (Gaentzsch, 1991). Public right of way is established in the B-Plan through stipulation. The location, width and length of the footpath, as well as its beneficiary – in this case the general public – must be specified in the B-Plan (Gaentzsch, 1991). Entering public right of way in the land registry is very important since public access is then secured not only by public law (through the B-Plan) but also by private law – through easement (Interviewee 7). It is only then that the negotiated right can be transferred to the new owner in the event of sale of property. Moreover, potential purchasers can stay informed as they can always check the land registry before purchasing, but not necessarily the B-Plan. Since public right of way can be seen as a source of restriction, it can reduce the value of land. In cases where, from the landowner's point of view, the use of a site as determined by B-Plan solely serves public interests, then he/she has the right to claim compensation in the form of payment or transfer against payment (Peine, 1993).<sup>35</sup> Areas where easement is established are considered POPS since public access is secured on private land.

### 6.4.3. Public easement

The most common way of agreeing public right of way is for it to be entered into the land registry. The alternative is public easement (i.e., the public-law counterpart to easement). Whereas easement is effective between landowners, public easement is effective between a landowner of servient land and the building supervisory authority; only the building supervisory authority can demand and enforce public easement (Peine, 1993). An owner of dominant land has no role in the process. If he/she wants to ensure his/her use on servient land, he/she must additionally arrange easement (Peine, 1993). In Germany, public easement is regulated via the State Building Regulation. Each state has its own Building Regulation; in the capital, it is the Building Regulation of Berlin.

Public easement is an obligation set on a piece of land. Accordingly, the landowner is required to perform, tolerate or refrain from something on

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35 § 41 (1) BauGB

his/her land.<sup>36</sup> The landowner may voluntarily carry out his/her obligation to obtain an otherwise impossible building permit (Rabe et al., 2014). The contents of public easement vary and can include public easement for distance surfaces, parking spaces, playgrounds, or open space.

Public easement is not a contract between the landowner and the responsible authority. It is solely created by declaration of landowner (Rabe et al., 2014). Once it is established, it is binding on the current owner as well as any subsequent owner. This obligation remains – regardless of change in ownership – until public interest no longer exists (Rabe et al., 2014). Public easement is registered in the public easement register and can only be erased with agreement from the building supervisory authority. As public easement dictates limitations on the use of land, the encumbered land may experience a decrease in economic value, hence the need to check it before signing a purchase contract. Even though public easement is created on a voluntary basis, compensation may be demanded.<sup>37</sup>

#### 6.4.4. Urban development contract

Cooperation between municipalities and private developers has become increasingly important for a number of reasons,<sup>38</sup> including the shift in planning culture towards project-related planning and the need for efficient use of public funds in the provision of necessary infrastructure.<sup>39</sup> To correspond to this trend, the Federal Building Code regulates cooperative agreements between local authorities and private developers.

Urban development contracts are a planning instrument through which private developers are integrated into financing social and technical infrastructure. For example, the subject of an urban development contract can include ‘the preparation and implementation of urban development measures by and at the expense of private developers’.<sup>40</sup> Land reallocation and soil decontamination are examples. Urban development contracts may also be written to promote and secure the aims pursued by urban land-use planners, in particular regarding the use of lands and the supply of housing for specific

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36 § 84 (1) BauO Bln.

37 see § 906 (2) BGB.

38 Battis/Krautzberger/Löhr, BauGB § 11 Rn. 4.

39 Battis/Krautzberger/Löhr, BauGB § 11 Rn. 4.

40 § 11 (1) BauGB.



populations.<sup>41</sup> The municipality and private investors may also make an official agreement to settle the expenses or other obligations that the municipality incurs or has incurred as a result of a planned development project.<sup>42</sup> Regarding POPS, the municipality and the private investor can make an agreement to determine who pays for the provision and maintenance of POPS, and how much.

The Berlin model of cooperative building land development (hereafter Berlin model) has been established in the state of Berlin since 2014 to provide guidelines for the completion of uniform and transparent urban development contracts in Berlin (SenSW, n.d.-I). It stipulates that private developers may under certain circumstances assign areas for public purposes, such as public traffic areas, areas for kindergarten and primary schools, and public green space, including playgrounds (SenSW, 2018). Hence, the Berlin model provides a framework for making contracts between the local authority and private developers in providing green space in Mediaspree area.

Urban development contracts have evolved into a crucial supplementary tool in urban land-use planning and have partially replaced more traditional governmental measures like byelaws (Pahl-Weber & Henckel, 2008). In principle, the municipality acts in the interest of the public, yet this should not result in the exploitation of private developers.<sup>43</sup> As it may potentially conflict with different interests, a careful approach is required: 'It always has to have something to do with the project and it has to be appropriate from an economic point of view' (Interviewee 7). In most cases, a contact person will be named with whom public sector officials can jointly consider not only the use and height of the building but also where POPS should be provided, before developing a plan and entering into an urban development contract (Interviewee 7). Although this contract is not publicly accessible due to data protection, a model contract was provided by Interviewee 7:

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41 § 11 (1) BauGB.

42 § 11 (1) BauGB.

43 Battis/Krautzberger/Löhr, BauGB § 11 Rn. 4.

### **Example of urban development contract regarding green space in Media-spree area (model contract)**

#### **Dedication of riverside as public green space**

- (1) The project is located in the planning area... in which the supply of public, near-residential green space is classified as “medium” according to Map 3 “Core Indicator Green Supply” of environmental atlas (FIS Broker, Feb. 2017, Annex 5). In a block-by-block analysis, it becomes clear that the project lies in a band of blocks between ... and ..., where the coverage of near-residential public green space is  $< 0.1 \text{ m}^2$  per inhabitant. This means that these blocks have insufficient public green space. According to the map “Supply of Playground – Public” (FIS Broker, Feb. 2017, Annex 5), the project is located in the planning area... whose supply level is at 4 (0.4 to less than  $0.6 \text{ m}^2$  per inhabitant). This suggests that public playgrounds are undersupplied in this area. The establishment of B-Plan..., which allows further construction of housing, will make the situation even worse by causing more shortages of green space and public playgrounds.  
Based on the Landscape Programme of Berlin, Table 14 (Guide value for open and green space),  $6 \text{ m}^2$  of near-residential public green space per inhabitant as well as  $1 \text{ m}^2$  of public playground per inhabitant are required. For a planned floor area of ...  $\text{m}^2$  for residential use,... new residents are to be expected. This leads to ...  $\text{m}^2$  of near-residential public green space and ...  $\text{m}^2$  of public playground. The planned public green space including playgrounds (...  $\text{m}^2$ ) with a total size of approximately ... $\text{m}^2$  is calculated based on this value. The project developer is aware of the needs.
- (2) Berlin will dedicate the area as public green space and recreation area, which is designated as public green space in the project plan with a size of approximately ...  $\text{m}^2$ , pursuant to § 2 (1) no. 2 of Act on Protection, Care and Development of Public Green Space and Recreation Area – last amended on 29.09.2004. Berlin will allow cycling at walking speed in the public green area.
- (3) The project developer agrees irrevocably to the dedication pursuant to (2). The approval of the project developer for the dedication is free; it is free of charge for the project developer.

#### Provision of public green space

- (1) Berlin will create public green space, including a public playground, at its own expense. The plan is attached as an annex. Berlin will fence the river-side with a length of around 20 m from the eastern boundary of the property.
- (2) The project developer reimburses Berlin for the costs of providing public green space in the amount of €... and of providing the public playground within the green space in the amount of €...

*(Source: A document provided by a local planning officer)*

### 6.4.5. Green stipulation

Green stipulation is one of the stipulations of the B-Plan, whereby certain areas may be dedicated to the planting of trees, shrubs and other kinds of planting.<sup>44</sup> Other kinds of planting include, for instance, grass or climbing plants for a façade or roof.<sup>45</sup> Green stipulation may also set out obligations relating to planting and to the preservation of existing trees, shrubs and other kinds of planting.<sup>46</sup> In case of the loss of greenery, replacement planting may also be obligatory.<sup>47</sup>

The aim of green stipulation is to make decisions specifically around greening built-up and non-built-up areas within the B-Plan.<sup>48</sup> Green stipulation is established for various reasons,<sup>49</sup> including urban design. For example, preservation of planting can reinforce a certain character for a housing development, or planting may be installed to shield or separate certain areas. Green stipulation may also be used to protect nature and landscape or to counterbalance a loss of natural environment caused by the

44 § 9 (1) no. 25 BauGB.

45 Battis/Krautzberger/Löhr, BauGB § 9 Rn. 150.

46 § 9 (1) no. 25 BauGB.

47 EZBK, BauGB § 9 Rn. 222.

48 EZBK, BauGB § 9 Rn. 216.

49 EZBK, BauGB § 9 Rn. 216.

construction.<sup>50</sup> Other reasons include rainwater infiltration and reduction of heat stress.

If a property experiences a significant drop in its value or incurs extraordinary expenditure that goes beyond the level required for the proper management of the property, the landowner is to be paid financial compensation.<sup>51</sup>

#### 6.4.6. Public and public authority participation

The aim of participation is to guarantee that all possible interests are considered when making spatial plans – from state spatial planning to regional planning, urban land-use planning and sectoral planning (Pahl-Weber & Henckel, 2008). Public participation is an instrument of plan preparation, whereas public authority participation is an instrument of plan coordination.<sup>52</sup> In this book, public and public authority participation is understood as one of the instruments for establishing the B-Plan. Crucially, this is where local opinion and knowledge regarding POPS can be expressed. The interest level of citizens in POPS may vary depending on the location, and there may be different interests around POPS (Interviewee 7). Each interest should be taken seriously and judged fairly, which may extend the planning process. Moreover, the procedure of participation for the B-Plan is particularly rigorous, as it is prescribed by the Federal Building Code and standardised into two stages: early and formal participation (see Figure 6.5). Both the public and public authorities – including public agencies (i.e., entities to which public sector duties have been delegated by law or pursuant to a law) – are involved in this procedure.<sup>53</sup>

The early public participation serves to inform the public about the overall goals and objectives of the planning, as well as the alternative solutions being considered and any potential impacts of the planning.<sup>54</sup> It also gives the public an opportunity to discuss the planning and to give feedback.<sup>55</sup> Public authorities are also to be informed and are requested to state their views.<sup>56</sup> This phase should take place as early as possible; seeking participation of the

50 see § 1a (3) BauGB.

51 § 41 (2) BauGB.

52 Battis/Krautzberger/Löhr, BauGB § 4 Rn. 1.

53 Battis/Krautzberger/Löhr, BauGB § 4 Rn. 3.

54 § 3 (1) BauGB.

55 § 3 (1) BauGB.

56 § 4 (1) BauGB.

public and public authorities once a solid plan is in place does not make much sense.<sup>57</sup> The results of early participation are then evaluated, duly weighing public and private interests and giving fair consideration to both (Pahl-Weber & Henckel, 2008).<sup>58</sup> A draft plan is then prepared based on the results.

The next step, formal participation, begins with public display. Here, the draft plan, together with the explanatory statement and available comments on environmental aspects, is displayed publicly for a month.<sup>59</sup> Both the public and public authorities may participate prior to the deadline by making objections to the plan or by offering recommendations.<sup>60</sup> When giving opinions, public authorities must limit their remarks to those issues that lie within their purview.<sup>61</sup> In cases where the plan affects the wider area, those who express concerns should be brought into this part of the process as well.<sup>62</sup> Formal participation procedures for both the public and public authorities can be carried out simultaneously.<sup>63</sup> The results of the formal participation are evaluated, again weighing the public and private interests duly and fairly.<sup>64</sup> If, after formal participation, the draft plan is amended or supplemented, the formal participation should be repeated.<sup>65</sup> Once ready, the B-Plan can finally be adopted in the form of a byelaw or municipal statute.<sup>66</sup> As soon as the plan and its supporting documents (i.e., explanatory statement and summary explanation) are published, the B-Plan comes into force.<sup>67</sup>

In this section, six regulatory planning instruments were explored in depth to show how they are exercised to directly intervene in private property and eventually secure land for POPS. The provision and management of POPS, in turn, involves several key aspects: the location of the POPS, its financing, any necessary greening, and incorporating local opinion and knowledge. Interestingly, these instruments are used on a case-by-case basis.

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57 Batts/Krautzberger/Löhr, BauGB § 3 Rn. 8.

58 § 1 (7) BauGB.

59 § 3 (2) BauGB.

60 § 3 (2) and § 4 (2) BauGB.

61 § 4 (2) BauGB.

62 § 4a (5) BauGB.

63 § 4a (2) BauGB.

64 § 1 (7) BauGB.

65 § 4a (3) BauGB.

66 § 10 (1) BauGB.

67 § 10 (3) BauGB.

## 6.5. Conclusion

The research on Mediaspree area reveals that the public sector in Berlin was very willing to engage the private sector in providing and managing public space. In the process of the rapid privatisation and development of the Mediaspree area, issues were raised about how to secure public access to the river and to provide more public space in the neighbourhood. Rather than (re)purchasing private land, various instruments have been used to guarantee public access.

The findings based on the Mediaspree area suggest that the public sector is responsible for regulation concerning the provision and management of POPS and does so using both indirect and direct planning instruments. Indirect planning instruments shape the decision-making environment and justify the need for POPS in Mediaspree area. This is important since the public sector would otherwise be unable to require POPS from building owners. In other words, the public sector needs good reasons for demanding POPS, and indirect planning instruments help the public sector prove any deficit of space for the public within the given neighbourhood. Direct planning instruments, on the other hand, regulate POPS directly on a case-by-case basis. In fact, different instruments are used for each POPS. They are site-specific and plan-focused.

Table 6.2 shows which planning instruments regulate which aspect of POPS. There is no regulation for zoning and facility since the provision of POPS does not depend on the zone in which a building is built or its use. Instead, it depends on the local circumstances. If there is a lack of space for public use and enjoyment within a neighbourhood, the public sector would demand POPS from building owners. Subsequently, detailed arrangements would be made through the negotiation between the public sector and the respective building owner. What is interesting here is that these instruments are mainly for the provision of POPS and, to be more precise, the location of POPS. In fact, half of the direct planning instruments – non-coverable area, easement and public easement – are solely location-oriented instruments, and all the instruments except for green stipulation regulate the location of POPS. This suggests that one of the main purposes of POPS in Mediaspree area is to secure public access to the river.

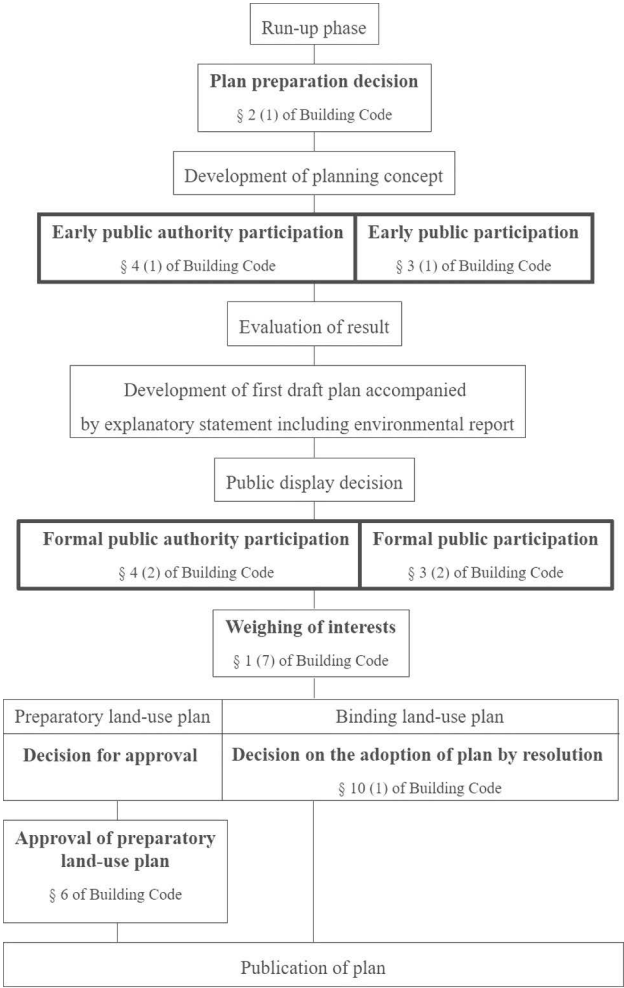
The type of POPS, meanwhile, is suggested by one of the informal and indirect planning instruments, namely the design guideline. The promenade type would seem to be the most appropriate type of POPS in Mediaspree area.

Other key aspects are the number of POPS, their dimensions and their amenities, all of which can be mentioned in public and public authority participation. Yet again, this depends on the given case. In some cases, public space is a topic; in others, it is not. It is also important to note that the result of participation is not legally binding. However, it gives the possibility for people other than local planning officers and building owners to engage themselves and express their ideas and opinions. Amenities can further be regulated by urban development contracts and green stipulation. Green stipulation is an interesting instrument, as it is devoted for greening of POPS. It is regulated differently but gives detailed information, for example, on the type of planting or green roof. Other subcategories include signage and indoor POPS, but these do not seem to play any significant role. Incentives are also arranged on a case-by-case basis through urban development contracts.

Management of POPS is generally less regulated. Among five different aspects of management of POPS, the instruments examined only address maintenance and financial support. In terms of maintenance, building owners are responsible; they must ensure that POPS stay clean and safe (Interviewee 7). Conversely, there may be exceptions depending on the arrangement between the city and the building owners (Interviewee 5). Financial support to manage POPS is regulated through urban development contracts, a useful instrument in that it can cover both the provision and management of POPS. The research further reveals that there are no inspection and infraction proceedings. As Interviewee 7 notes: 'We visit POPS but we are not aware of whether they are still in line with the purpose and correspond to what was once established. But when after, for example, 20 years, you notice that there are changes and it cannot be accepted that way, then we may have to do inspections'. The question here is which department should be in charge and whether there will be enough financial and personnel resources to implement such proceedings, as claimed by Interviewee 5. Lastly, building owners themselves regulate the use of POPS through rules of conduct, while there is no instrument that explicitly promotes the use of POPS from the public sector.

In summary, the public sector is primarily active in regulating the provision of POPS, especially their location, and less active in managing POPS. Moreover, planning instruments for POPS in Mediaspree area are characterised by a case-by-case basis and a plan-focused approach.

Figure 6.5 Procedure for urban land-use planning (standard procedure)



Source: Author's own figure.



Table 6.2 Aspects covered by planning instruments for POPS in Mediaspree area

Category	Indirect planning instruments				Direct planning instruments				Public and public authority participation
	Formal planning instruments (except for B-Plan)	Informal planning instruments	Financial instruments	Non-coverable area	Easement	Public easement	Urban development contract	Green stipulation	
Provision of POPS	Subcategory								
	Zone								
	Facility (Building)								
	Location of POPS								
	Type of POPS								
	Number of POPS								
	Dimension of POPS								
	Signage								
	Other amenities								
	Indoor POPS								
Management of POPS	Incentives								
	Maintenance of POPS								
	Financial support								
	Inspection of POPS								
	Infraction proceedings								
	Use of POPS								

Source: Author's own table.

