

Streamlining Municipal Property Transactions in South Africa for Enhanced Social Value Creation

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Abstract

Legislation governing the sale and lease of immovable property by South African municipalities to third parties is extensive, multi-faceted and often overlapping. Municipalities must also consider their overall objectives and mandate stated in the Constitution of South Africa. The central theme of these objectives is the delivery of social value to the local community. This study aims to determine to what extent legislative requirements applicable to municipal immovable property transactions support the realisation of social value objectives. This qualitative research follows a case-study approach by investigating and analysing the processes followed at two South African metropolitan municipalities when undertaking immovable property transactions. The selected municipalities are the City of Cape Town Municipality and eThekweni Municipality. The study identifies and considers municipal officials' challenges in applying the legislation. The findings illustrate how the comprehensive legislative requirements, aimed at transparency and avoiding corruption, inadvertently discourage social value creation. Recommendations are made for legislative improvements to streamline the transaction process.

Keywords: Municipal property transactions, social value creation, South Africa

1. Introduction

This study focuses on social value delivery through municipal property transactions in South Africa, specifically the sale and lease of municipal immovable property to third parties. Given the inequalities plaguing communities in South Africa, the importance of social value creation and the role that municipal immovable property transactions can play in its improvement should not be underestimated.

In the private sector, immovable property (real estate) is often viewed in terms of its financial value and potential for profit generation, with less consideration given to the wider benefits to society (Urban Land Institute, 2021). In contrast, public sector property management relates directly to achieving the mandate and objectives of the government. The Constitution of South Africa sets out the objectives of municipalities, the local sphere of government (Constitution, 1996). The objectives include operating in a democratic and accountable manner to the benefit of the local community, providing services to the community, promoting social and economic development and advancing community involvement in local government operations. These objectives reveal an overarching theme – delivering social value to local communities.

Municipal immovable property transactions are governed by extensive legislation. Before the sale or lease of municipal immovable property, numerous parties, including provincial and national governments, must be consulted. Furthermore, a public participation process and a competitive procurement process are required (Local Government: Municipal Finance Management Act, 2003, Municipal Asset Transfer Regulations, 2008). Only in very limited circumstances may direct transactions with preselected third parties be undertaken. The wide-ranging legislation does not necessarily have service delivery as the main objective (Magni, 2013). Instead, the legislation and oversight measures aim to ensure transparency and prevent corruption (Kaganova, 2010).

However, there should be a balance between these protective measures and allowing for optimal delivery of social value through municipal transactions. The lengthy and complex legislative processes involved in the sale and lease of municipal immovable property can delay or hinder the delivery of important services. This would thwart the main objectives of municipalities and discourage social value delivery.

2. Literature Review and Legislative Framework

This section is divided into three parts. First, the concept of social value is examined. This is followed by a brief discussion of the nature and context of municipal immovable property transactions. Finally, an in-depth analysis of the applicable legislation is provided.

2.1 Understanding social value

There is no single accepted global definition of social value. Social Value International (2016) describes social value as the value created through changes to the lives of people, organisations and entities. The Urban Land Institute (2021:13) defines social value as “the contribution of activities towards economic, social and environmental well-being”. The latter definition aligns with the United Nation’s Sustainable Development Goals (United Nations, 2015). Emerson (2003) defines social value creation as the combination of resources, inputs, processes or policies to advance the standard of living for individuals or society.

Understanding social value depends on factors such as location and the type of property transaction (De Paola *et al.*, 2021). The practical application of social value delivery also depends on the identity of the role player. For municipalities, social value is connected to planning and local development targets such as social housing delivery and job creation (Urban Land Institute, 2021). Other role players such as private developers tend to view social value delivery as job creation and training opportunities (Ionascu *et al.*, 2020). Companies and investors traditionally viewed social value as a deliverable of corporate social responsibility (CSR), but this has expanded. Companies have been incorporating social value within environmental, social and governance (ESG) business strategies (Urban Land Institute, 2021; Social Value International, 2016). When considering the application of social value, one must identify how that specific role player can contribute to social value creation.

Social procurement is another aspect of social value delivery (Loosemore *et al.*, 2021; Loosemore, 2016). Direct social procurement allows for the purchasing of goods and services from socially responsible businesses and businesses that provide community services such as not-for-profit organisations. Through indirect social procurement, social value provisions are implemented through policies and contracts requiring business partners to implement certain social provisions (Raiden *et al.*, 2019). Municipalities implement both direct and indirect social procurement practices.

Recently, social value delivery has gained traction through legislation, procurement processes and public demand (Raiden *et al.*, 2019). Historically, social value delivery was limited to the domain of certain service delivery segments (e.g. health care and education) but there has been increased recognition that all sectors have a role to play, including the property sector. To improve property’s function to create social value, all role players must incorporate social value considerations into their decision-making models. The true value of property is not only assessed based on financial value but also on what social returns are being generated (Urban Land Institute, 2021).

Municipalities are well placed to deliver social value to the community through the application of local context.

2.2 Municipal immovable property transactions

South African municipalities own immovable property in the form of numerous and significant portions of land, buildings and infrastructure, valued at almost eight billion rand (Statistics South Africa, 2023a). In the first instance, municipal immovable property must be utilised to deliver municipal services (Steytler and De Visser, 2023). When the immovable property is surplus to these requirements, it may be sold or leased to third parties (Local Government: Municipal Finance Management Act, 2003).

Decisions to sell or rent out certain municipal property are made to fund other projects or to lessen debt (Kaganova, 2010). In contrast to industry practices involving private-sector property transactions, the legislation applicable to municipal property transactions does not consider market conditions when determining the most opportune time to dispose of municipal property. This may lead to sub-optimal sale and rental prices. Regulations going against established property management principles should be improved and modernised (Ngwira and Manase, 2015; Kaganova, 2010; Kaganova and Nayyar-Stone, 2000).

The need for improvement and modernisation also applies to the transaction process prescribed by legislation. Even in cases where the decision to sell or lease municipal property is made at the optimal time (in terms of market supply and demand), lengthy legislative processes may delay the implementation of the transaction by several months or even years. The delay between the transaction decision and the implementation thereof can also negatively affect sale and rental prices. Consequently, municipalities cannot maximise social value delivery through their immovable property transactions.

2.3 Applicable legislation

Wide-ranging legislation governs the sale and lease of municipal property transactions with third parties. Examples include the Local Government: Municipal Finance Management Act, 2003; Municipal Asset Transfer Regulations, 2008; Local Government: Municipal Systems Act, 2000; Preferential Procurement Framework Act, 2000; and the Preferential Procurement Regulations, 2022. The legislation provides an extensive and prescriptive structure for the sale and lease of municipal immovable property (Steytler and De Visser, 2023; Van Wyk, 2024).

The Local Government: Municipal Finance Management Act (2003) provides the framework for steps to be followed before the disposal of a capital asset. One of the main provisions of this Act is that assets required for the provision of basic municipal services may not be alienated (Local Government: Municipal Finance Management Act, 2003; *Waenhuiskrans Arniston Ratepayers Association v Verreweide Eiendomsontwikkeling (Edms) Bpk*, 2011). Another requirement is the consideration of the “fair market value” and “economic and community value received in exchange for the asset” in determining whether to alienate the asset (Local Government: Municipal Finance Management Act, 2003:14(2); *City of Tshwane Metropolitan Municipality v Brooklyn Edge (Pty) Ltd*, 2022; *Paradyskloof Golf Estate (Pty) Ltd v Municipality of Stellenbosch*, 2011). In addition, transactions involving immovable property must be “fair, equitable, transparent, competitive and consistent with the supply chain policy” of the municipality (Local Government: Municipal Finance Management Act, 2003:14(5); *Plettenberg Bay Country Club v Bitou Municipality*, 2005;

Van Wyk, 2020). These provisions are extensive and provide numerous factors to be considered before transacting. Failure to comply with these provisions will invalidate the transaction, having serious repercussions for municipalities and the parties transacting with them.

The overarching principles provided in the Local Government: Municipal Finance Management Act (2003) are developed and expanded by the associated Municipal Asset Transfer Regulations (2008). The regulations contain four governing principles. The first relates to the identification of the value of the asset as part of the transaction process. The second principle focuses on ensuring continuity of service delivery. The third principle provides for the transfer of risk to take place simultaneously with the asset transfer. The last principle requires that assets are disposed of fairly and without affecting service delivery (Municipal Asset Transfer Regulations, 2008; Van Wyk, 2020; Van Wyk, 2024). These principles ensure that municipalities identify the specific asset to be disposed of and consider its value, to allow them to evaluate whether they are receiving a fair value in return. Continuity of municipal service delivery is crucial. Therefore, a municipality must ensure that the asset is not required to provide a municipal service, which will be compromised should the asset be sold or leased to a third party.

For sale transactions, the regulations distinguish between the sale of high-value capital assets and other capital assets. High-value assets are those valued at more than R50 million, one percent of a municipality's total capital asset value or where the total value of capital assets transferred in one year exceeds 5% of the total asset value of the municipality (Municipal Asset Transfer Regulations, 2008). Additional requirements apply in the case of high-value assets, for example, approvals may only be granted by the municipal council and may not be delegated. All other capital assets (i.e. those valued at less than R50 million) are grouped together in a single, wide-ranging approval category. This category could include prime undeveloped centrally located land valued at R49 million, a R20 million commercial building, or a R3 million community centre. It could also include a small road reserve valued at a few thousand rands, which the adjoining owner wishes to acquire for landscaping, access, or security purposes. These examples illustrate that, despite the assets having purposes, monetary value and the value they deliver to the community, the transaction approval process is the same.

For lease transactions, the regulations distinguish between significant and non-significant rights. Significant rights are those granted in respect of an asset valued above R10 million and the right to be granted extends beyond a three-year period (Municipal Asset Transfer Regulations, 2008). As with sale transactions, there are only two categories of lease transactions – those that are significant rights and those that are not. Whether a transaction relates to a 10-year lease of a commercial building valued at R9 million or a two-month lease of a room in a building to provide social services, such as a soup kitchen, the same process must be followed before approval.

The processes when undertaking sale and lease transactions are fairly similar. For ease of reference, this discussion jointly refers to high-value sale transactions and significant lease rights as “major transactions”. In contrast, those transactions that do not meet the specified thresholds are referred to as “minor transactions”.

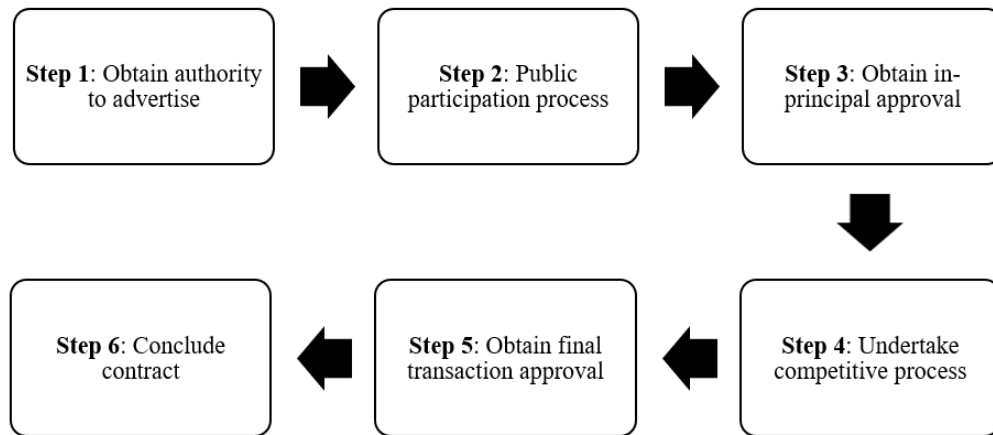


Figure 1: Procedural steps prescribed by the Municipal Asset Transfer Regulations, 2008
Source: Authors’ construct (2024)

Figure 1 illustrates the six steps before selling or leasing an asset to a third party, as stipulated in the Municipal Asset Transfer Regulations (2008). In the case of major transactions, certain authorisations required in steps 1, 3 and 5 may only be granted by the full municipal council (Local Government: Municipal Finance Management Act, 2003; Steytler and De Visser, 2023). For minor transactions, the authority may sometimes be delegated (Municipal Asset Transfer Regulations, 2008). The distinction between major and minor transactions is useful. Municipal councils do not necessarily meet every month and there are also the logistical issues of obtaining numerous signatures on reports. Approval from legal services and cut-off dates for the council’s agenda mean that obtaining municipal council approval could add a few months to the approval process. Therefore, municipalities may implement delegation systems to enable the approval of minor transactions by officials rather than serving before the full council.

Step 2 concerns the public participation process providing for consultation with the community and national and provincial treasuries. At least 60 days must lapse between the municipal council’s public participation authorisation and the approval of the transfer (Municipal Asset Transfer Regulations, 2008). Step 2 therefore adds two months to the approval process. For step 3, following the conclusion of the public participation process, the municipal council may determine “in principle” that the asset may be sold or leased. In the case of major transactions, this authority cannot be delegated - the decision must be made by the municipal council.

Once in-principle approval has been obtained, the municipality’s supply chain management policy must be followed for step 4 (Municipal Asset Transfer Regulations, 2008; *Nelson Mandela Bay Metropolitan Municipality v Erastyle (Pty) Ltd*, 2022). The supply chain process typically involves tenders and auctions, which take a considerable amount of time to complete. Steytler and De Visser (2023) argue that applying social value considerations in exchange for municipal assets may contradict the legislative requirements focussing on highest-price procurement principles (Local Government: Municipal Finance Management Act, 2003). They suggest that this may be remedied by ensuring that a municipality’s supply chain management policy explicitly provides for transactions below market value, and includes specific factors and processes to be considered for below-market transactions.

For step 5, once a successful candidate has been identified via a competitive process, the transaction must be formalised through a written agreement for final approval. This agreement must meet certain requirements (Municipal Asset Transfer Regulations, 2008). For example, leases must include a clause prohibiting the lessee from ceding or sub-contracting the rights obtained. Third parties who want to sub-lease portions of the property will be dissuaded from the transaction. For example, an NGO may wish to conclude a lease with the municipality and allow for subleases to offer other programmes or allow community start-up businesses an opportunity to sublease. Such uses could fall foul of the ceding and sub-contracting restriction.

During step 6, once the municipal council has approved the terms of the written agreement, the transaction may be concluded (Municipal Asset Transfer Regulations, 2008). Having to negotiate all the finer terms of the contract and place it before the council in its entirety delays the transaction process. If the parties want to amend terms before signature, the contract may again need to be placed before the council, which generally only meets monthly. Certain transactions may end up serving before the council on three separate occasions (authority to undertake public participation, in principle approval and final approval). This process can be streamlined by combining some steps or delegating certain approvals. As this analysis shows, the six-step transaction process is time-consuming and comprehensive to the extreme. Some requirements are excessive for the type of transaction. There are also repetitive steps within the approval process. If there is allowance for minor transactions and transactions meeting an important community need to follow a less onerous process (compared to commercial transactions), municipal resources can be redirected to address social needs.

The bulk of the requirements relating to the sale and lease of municipal immovable assets are contained in the Municipal Finance Management Act and associated regulations, as discussed above. However, additional legislation applies to these transactions. The additional legislation can be grouped according to three themes, namely municipal, procurement and conveyancing. The municipal legislation comprises the Local Government: Municipal Systems Act (2000) and planning bylaws of the relevant municipality. The objectives of the Municipal Systems Act include providing for social and economic upliftment of local communities, access to affordable essential services and community participation in local government matters. The Act contains numerous provisions regarding community participation requirements flowing from the Constitution (1996). This is important when dealing with the public participation requirements in the Local Government: Municipal Finance Management Act (2003) discussed above. In addition, municipal planning by-laws must be considered (e.g. City of Cape Town Municipal Planning By-Law, 2015; eThekweni Municipality Planning and Land Use Management By-Law, 2016). The planning by-laws cover several planning-related matters that impact property transactions, including aligning developments with the municipal spatial development framework, property zoning and permitted uses, and sub-division requirements.

Additional procurement legislation applicable to the sale and lease of municipal property includes the Municipal Supply Chain Management Regulations (2005), Preferential Procurement Policy Framework Act (2000) and Preferential Procurement Regulations (2022). A municipality's disposal management policy must provide for market-related sale and lease transactions unless "public interest or the plight of the poor demands otherwise" (Municipal Supply Chain Management Regulations, 2005; Steytler and De Visser, 2023). Procurement processes aim to regulate the movement of goods and services from a provider to the municipality (Fourie, 2018).

The sale and lease of municipal property to third parties are different. However, the regulations do not make a distinction.

The third group of additional legislation, dealing with the conveyancing process, comprises the Deeds Registries Act (1937) and the Land Survey Act (1997). The Deeds Registries Act sets out the requirements for a valid contract of sale of immovable property, the transfer of ownership and registration thereof in the appropriate Deeds Office. The Land Survey Act specifies that approved diagrams or general plans are required for the registration of immovable property and that surveys are required for unregistered land. The registration process can be cumbersome and costly. This negatively impacts social value delivery. In South Africa, it is common practice for the purchaser to pay conveyancing costs (Warmback, 2023). While paying the conveyancing costs may not be an issue in large commercial transactions, small businesses that offer social services may struggle to find the necessary finance.

The many legislative requirements above illustrate the complicated and extensive steps municipalities must follow before selling or leasing municipal property. The interpretation and implementation of these legislative requirements by municipal officials may lead to delays, possible errors and subsequent legal challenges (Zavadskas *et al.*, 2021). This works against the municipality's objective of social value creation.

3. Methods

This study follows a qualitative approach with a multiple case study design, focusing on specific metropolitan municipalities in South Africa. Figure 2 depicts the location of the eight metropolitan municipalities in the country.



Figure 2: Location of South African metropolitan municipalities
Source: Wikimedia Commons, 2016

All metropolitan municipalities have exclusive executive and legislative authority within their areas and fulfil the entire spectrum of municipal functions (Constitution, 1996; Steytler and De Visser, 2023). They each serve populations above one million people and are responsible for the

bulk of municipal expenditures in South Africa (Auditor General of South Africa, 2022). This study is limited to metropolitan municipalities, as they serve the largest populations and are best placed to provide information regarding municipal sale and lease transactions.

The study aims to identify and investigate the legislative and procedural challenges faced by municipal officials in delivering social value through municipal property transactions. Other issues that may impact municipal social value delivery such as poor performance due to lack of financial controls and financial mismanagement are not the focus of this study and may skew the results. Therefore, the study is limited to well-functioning metropolitan municipalities with the necessary financial and human resources to implement legislation effectively. In selecting metropolitan municipalities for participation, numerous factors were considered, including the Auditor General's findings regarding qualified/unqualified audits, wasteful or irregular expenditure (Auditor General of South Africa, 2022), and reported corruption at the municipalities (City of Johannesburg, 2022). Applying these filters, three metropolitan municipalities qualified for participation. All three were invited, but only two agreed to participate – the City of Cape Town and eThekweni Municipality.

The City of Cape Town is located on the southern peninsula of the Western Cape province and consists of an area of 2 441 km² (Main, 2024). It is South Africa's second-largest economic hub, second most populous city (Main, 2024), and home to 4 772 846 people (Statistics South Africa, 2023b). The municipality has an unemployment rate of 23,9%, compared to 32.9% nationally (Statistics South Africa, 2024). Figure 3 shows the City of Cape Town's municipal boundary.



Figure 3: City of Cape Town municipal boundary
Source: Main, 2024: 197

eThekweni Municipality is located within the province of KwaZulu-Natal and encompasses an area of 2 556km² (Main, 2024). The municipality includes Durban, the country's third-largest city and it hosts Africa's busiest port (Main, 2024). It has a population of 4 239 901 (Statistics South

Africa, 2023b) and an unemployment rate of 22%, compared to the national rate of 32.9% (Statistics South Africa, 2024). Figure 4 shows eThekweni Municipality's municipal boundary.



Figure 4: eThekweni Municipality's municipal boundary
Source: Main, 2024: 88

Primary data was collected through semi-structured interviews with selected municipal officials over five months from October 2022 to February 2023. Qualifying criteria were applied to ensure that the selected interviewees had appropriate knowledge of the subject matter. These included being employed at a senior level at the municipality, and concluding sale and lease transactions regularly. Five officials from the City of Cape Town and four from eThekweni Municipality (i.e. nine in total) qualified and agreed to participate. The nine participants have a wide range of training and skills, including qualifications in property studies, finance, law, and public administration. Their experience and areas of knowledge are also wide-ranging and include finance, housing, conveyancing and surveying. All participants have been employed in the public sector for several years and have been operating in the property environment for over a decade. To ensure anonymity, participants' job titles and roles within the respective municipalities are not revealed. Instead, the five City of Cape Town participants are labelled CT1 to CT5 and eThekweni Municipality's four participants are labelled EM1 to EM4 respectively.

Data analysis was undertaken through data reduction, data display and deducing of findings (Walliman, 2021). Both inductive and deductive coding approaches were applied. Interviews were first transcribed and then summarised. The data was systematically reviewed. NVivo software was utilised to assist with the coding and data reduction process. Pattern coding was employed to identify patterns and common themes (Creswell, 2014). Overlapping and redundant data were combined and reduced to identify initial themes. The data and themes were reviewed and adapted until an extensive collection of themes was identified within each case-study municipality, as well

as across them (Cresswell *et al.*, 2007). This allowed for a detailed discussion of the key themes and considered variation of perspectives between participants of the two case-study municipalities (Cresswell, 2014). The initial analysis enabled the identification of patterns and themes used for the cross-case analysis (Walliman, 2021). As part of the analytical strategy, contending explanations were identified and examined. One of the techniques recommended by Yin (2018: 44) is “pattern matching” by using a case-based approach to analyse across two (or more) cases. The questions posed to the participants of both case-study municipalities were the same, making cross-case analysis possible. As both metropolitan municipalities are South African and subject to similar legislation, a high level of homogeneity was present.

4. Findings and Analysis

During data analysis, several themes and subthemes within the transaction process were identified including overall timeframes, specific time-consuming aspects, procedural challenges, legislative shortcomings and implications for social value delivery. For brevity, this paper presents the findings in two sections: procedural aspects and legislative shortcomings.

4.1 Procedural aspects

This section focuses on process timeframes, time-consuming steps and other procedural challenges experienced by the study participants during the transaction approval process. The impact of these challenges is also highlighted.

Research participants identified lengthy timeframes as a major challenge associated with municipal sale and lease transactions. Timeframes are measured from the initiation of the sale or lease application until the registration of the transfer of ownership at the Deeds Office, or the signature of the lease agreement respectively. Participants indicated that sale transactions generally take longer to complete than lease transactions. The two main reasons are land use requirements and the Deeds Office registration processes applicable to sale transactions.

Participants reported that the timeframe to conclude different lease transactions varies significantly. City of Cape Town participants estimated a transaction timeframe between three months to two years, while eThekweni Municipality participants indicated that, on average, lease transactions take two years to complete. The findings show that certain types of minor lease transactions take longer to complete at eThekweni Municipality than at the City of Cape Town. In part, this is due to the use of delegated authority to approve certain types of minor lease transactions at the City of Cape Town. The use of delegated authority for minor transactions is in line with legislative provisions (Local Government: Municipal Finance Management Act, 2003; Municipal Asset Transfer Regulations, 2008; Steytler and De Visser, 2023).

One interviewee (CT3) explained that there may be an initial appetite for a certain type of transaction from the market, however, the lengthy timeframe to finalise the transaction may cause investors or developers to lose interest by the time the necessary processes have been completed. The interviewee added that a delayed transaction can stall the entire project, which can, in turn, lead to illegal occupation of the property while it stands vacant pending transaction approval. Furthermore, delays in the approval process can increase project costs, threatening the project’s feasibility. There are also financial implications for the municipality. The lengthy transaction process leads to a delay in income received from sales and leases. This can delay the provision of certain municipal services due to a budget shortfall.

Participants from both municipalities identified the management of the public participation process as a challenge. As part of the public participation process, different stakeholders within different spheres of government, public organisations and the public are consulted on the proposed transaction (Local Government: Municipal Systems Act, 2000; Municipal Asset Transfer Regulations, 2008). These stakeholders have different, often conflicting, needs and priorities, leading to a protracted public participation process. As one participant (EM3) explained: “a sale in the normal commercial world would take a year at the most but with a municipality, because of the different parties involved in the process, it ends up being a very lengthy process and someone with a commercial plan may have to wait three years before they even start the project. These are the delays that are synonymous with municipal transactions”.

4.2 Legislative shortcomings

This section focuses on legislative challenges and shortcomings reported by the research participants in the context of municipal property transactions. It also highlights the impact of the legislative environment on the delivery of social value.

Participants from both municipalities identified the extensive legislation applicable to sale and lease transactions as being a significant challenge (Zavadskas *et al.*, 2021). This challenge relates to the six-step process prescribed by the Municipal Asset Transfer Regulations (2008). An example was provided of a non-profit organisation (NPO) that approached the municipality to acquire land to deliver a social project to the community. However, due to the lengthy prescribed approval process, the funding offer lapsed and the project was not delivered.

Participants bemoaned the impact of cumbersome and overlapping legislative processes. One participant (CT4) explained that a property transaction may require different approvals from numerous committees on three separate occasions. The transaction approval process prescribed by legislation must be reviewed, streamlined and simplified to allow for a shorter turnaround time. Participant CT5 explained: “The objectives are clear in terms of what the legislation wants to achieve but there should be opportunity to allow for speeding up of service delivery within the process of certain fixed steps that you have to go through and potential repetition in the process. If this could be minimised and some of the steps dealt with simultaneously or delegated, the process would be improved”. Participant EM4 referred to this issue as “baking the cake several times” and recommended a simpler and more efficient process by removing the repetitive steps. Another reported challenge is that legislation is not always fit for purpose. Participants regard procurement legislation (Preferential Procurement Framework Act, 2000; Preferential Procurement Regulations, 2022) as being more suited to procuring goods and services than income generation through the sale or lease of immovable assets. Participants also indicated that some applications are not sufficiently covered by the legislation, creating uncertainty. Kaganova and Nayyar-Stone (2000) advise that for local government property to function optimally, national legislation must be supportive and enabling. Legislation must be amended to address grey areas and be generally fit for purpose.

Participants had mixed views about whether the legislation applicable to municipal sale and lease transactions encourages social value creation. Steytler and De Visser (2023) also indicate the potential contradiction between applying social value considerations and the requirement of the Local Government: Municipal Finance Management Act (2003) to procure the highest price. On the one hand, several participants from both municipalities referred to legislative provisions that generate an opportunity for social value creation. For example, the Municipal Asset Transfer

Regulations (2008) allow a municipality to transact at less than market value where it is in the public interest to do so, such as in cases where a need is created by the circumstances of the impoverished. In addition, the public tender process is perceived to encourage a fair process by allowing all members of the public to compete (Municipal Supply Chain Management Regulations, 2005).

On the other hand, participants indicated that while the legislation provides for social value creation, the lengthy procedural requirements negatively impact the practical delivery of social value to the community. The delays inherent in the tender process and the extensive procurement process to verify information delay the social value that a transaction may create. Participant CT3 explained: “There is a housing shortage, and surplus municipal properties are a tool to improve social value in society. If the challenges lead to the municipality not being able to best utilise the properties, then the community loses out on job creation (both for business purposes and social entrepreneurship) and opportunities to provide housing, rehabilitation centres and other benefits that come with developments such as social care facilities”. Another participant (EM1) weighed the application process against municipal targets to transform and empower previously disadvantaged community members or small businesses. The extensive application process, including the submission of tender documents and meeting all the financial and vetting requirements of supply chain management procedures, make it very difficult for previously disadvantaged community members or small businesses to compete (Local Government: Municipal Finance Management Act, 2003; Municipal Supply Chain Management Regulations, 2005). The specialist knowledge required to complete some of the tender documents can exclude smaller businesses. Participant CT5 described the legislation as self-defeating: “The goal is service delivery, but it takes too long to achieve, due to all the steps that must be followed. This does not mean that the steps should not be followed but there are better ways to safeguard government property against corruption without having to prolong the process”.

5. Conclusions and Recommendations

This study illustrates that municipal immovable property transactions do not provide optimal social value delivery. This is largely due to the extensive and restrictive legislation that governs these transactions. Table 1 summarises the procedural challenges and legislative shortcomings discussed in the analysis of the study’s findings. The table also reflects the five recommendations to address these challenges and shortcomings, as discussed in more detail below.

Table 1: Recommendations to address procedural challenges and legislative shortcomings

Procedural Challenges / Legislative Shortcomings	Recommendations
Municipal council must consider the same transaction several times during different stages of the approval process	Remove process duplication by combining certain steps or delegating approval authority
Municipal Asset Transfer Regulations (2008) do not distinguish between social value transactions and pure commercial transactions	Tailor an approval process for social-value transactions to distinguish it from commercial property transactions
Municipalities cannot prioritise social-value transactions	Amend legislation to enable the prioritisation of transactions that create social value
Outdated thresholds in legislation are out of touch with current market values	Regularly update legislative definitions and financial thresholds to align with prevailing market conditions
Subletting of municipal property is prohibited	Remove legislative requirements that are inconsistent with property norms

Source: Authors’ construct (2024)

Some of the prescribed steps in the approval process are time-consuming and there is a measure of overlap between the various steps, leading to protracted transactions. This results in missed opportunities to create social value. Therefore, the first recommendation is to streamline legislative provisions to remove process duplication by combining some of the steps. Municipalities should also ensure that decision-making powers are delegated to the extent permitted by legislation (Local Government: Municipal Finance Management Act, 2003; Municipal Asset Transfer Regulations, 2008), to enable decisions regarding minor transactions to be taken by departmental officials rather than the municipal council (Steytler and De Visser, 2023). This will reduce turnaround times for minor transactions and free up resources, which can be focused on major transactions and those creating social value.

The approval process prescribed by the Municipal Asset Transfer Regulations (2008) does not distinguish between social value transactions and purely commercial transactions. All six transaction steps must be concluded irrespective of whether the sale or lease will deliver an important community or social need. It is recommended that the relevant legislation deal with commercial and social transactions separately to allow for differentiation and tailored processes.

Currently, there is no opportunity to prioritise transactions creating social value for the community. As a result, social value opportunities may be lost due to the lengthy delays brought about by the extensive approval process. The third recommendation is that revised legislation must allow for the prioritisation of those types of transactions that create social value for the local community.

Lengthy transaction processes are of particular concern in the context of minor transactions. The distinction between minor and major transactions determines whether approvals for transactions could be delegated and whether additional approvals are required. The financial thresholds for minor and major transactions set in 2008 have not been updated in more than fifteen years (Municipal Asset Transfer Regulations, 2008). Property values have increased significantly since then. Outdated legislation results in thresholds that are out of touch with current market values. The study recommends that the definitions of non-significant and non-high-value assets be reviewed and updated regularly to align with prevailing market conditions.

Finally, legislative requirements inconsistent with property norms should be revisited. This would include lifting the prohibition on subletting and assignment in municipal lease agreements.

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No potential conflict of interest was reported by the authors.

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