LEGAL REPORT: COMPLIANCE OF THE MOSSEL BAY MUNICIPALITY WARD 10 (HARTENBOS) DRAFT BUDGET PUBLIC PARTICIPATION PROCESS 2026/2027

DATE: 28 April 2026

SUBJECT: Assessment of Legality of the Public Participation Session held on 21 April 2026

---

1. INTRODUCTION AND SCOPE

This report provides a formal legal assessment of the public participation process conducted by the Mossel Bay Municipality for the 2026/2027 Draft Budget in Ward 10 (Hartenbos). The assessment evaluates whether the municipality's actions complied with the constitutional and statutory requirements for public participation in South African local government.

The analysis is based on documentary evidence, including the 9-page Ward 10 presentation [1], the full Draft Budget [2], formal objections lodged on the Eden Movement platform [3], and an audio recording of the meeting held on 21 April 2026 [4]. The audio recording has been enhanced, transcribed, and translated to provide an accurate record of the proceedings.

2. FACTUAL BACKGROUND

2.1 The Meeting Format and Conduct

On 21 April 2026, between 17:00 and 19:00, the Mossel Bay Municipality held a public participation session at the Hartenbos Boardroom. The meeting was structured as a "walk-in" session rather than a formal public hearing.

According to the transcribed audio recording of the meeting's introduction [4], Councillor Leon van Dyk explicitly stated:

> *"Welcome to the RMP session. What we are going to do is, there are some pieces of documents that have been issued, you are welcome to make use of those documents.* ***This is not a question and answer session.*** *What we are going to ask from you is, you can take the document away.* ***You are not going to do a formal presentation.*** *You can sit and watch what runs on the screens, and then you are going to eat, because that is what it is all about."*

When challenged by a member of the public (Johan Grabe) regarding the lack of a presentation, the Councillor reiterated:

> *"No, I am not going to do a two hour session, we are in a meeting, so it is available for everyone to ask questions on the presentation and on the documents."*

2.2 Documentary Disclosure

Attendees were provided only with a 9-page (19-slide) PowerPoint presentation summarizing Ward 10 IDP priorities and three capital projects [1]. The full Draft Budget 2026-27, which spans hundreds of pages and includes critical annexures such as the Tariff List (Annexure A), Budget Related Policies (Annexure B), and the Detail Capital Plan (Annexure C), was not provided or presented at the meeting [2].

Attendees were instructed to submit written comments by 30 April 2026, restricted to the contents of the 9-page document provided.

3. LEGAL FRAMEWORK

3.1 Constitutional Imperatives

Section 152(1)(e) of the Constitution of the Republic of South Africa, 1996, states that an object of local government is "to encourage the involvement of communities and community organisations in the matters of local government" [5]. Section 195(1)(e) further requires that "people's needs must be responded to, and the public must be encouraged to participate in policy-making" [5].

3.2 The Municipal Systems Act 32 of 2000 (MSA)

The MSA operationalizes the constitutional mandate for participatory governance:

- **Section 16(1):** Requires municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance, specifically including participation in the preparation of the budget [6].
- **Section 17(2):** Mandates the establishment of appropriate mechanisms, processes, and procedures to enable participation, which must include "public meetings and hearings by the municipal council and other political structures" [6].
- **Section 21(4):** Requires that when a municipality invites written comments, it must state that any person who cannot write may come during office hours to a place where a staff member will assist them in transcribing their comments [6].

3.3 The Municipal Finance Management Act 56 of 2003 (MFMA)

The MFMA governs the financial affairs of municipalities, including the budget process:

- **Section 22(a):** Dictates that immediately after an annual budget is tabled, the accounting officer must make public the annual budget and the documents referred to in section 17(3), and invite the local community to submit representations [7].
- **Section 17(3):** Lists the documents that must accompany the budget, including draft resolutions for tariffs, measurable performance objectives, cash flow projections, and proposed amendments to budget-related policies [7].

3.4 Relevant Case Law

The Constitutional Court in *Doctors for Life International v Speaker of the National Assembly* established that public participation must be meaningful and provide citizens with a genuine opportunity to be heard [8]. A mere formalistic or "tick-box" approach is insufficient.

In *Afriforum NPC v City of Tshwane Metropolitan Municipality* (2025), the High Court affirmed that public participation must be conducted with reference to the correct and complete documents. The court held that the exercise of public power must be rational and lawful, and failure to provide the necessary documents renders the participation process unlawful [9].

Furthermore, the principle of legality requires municipalities to adhere to their own adopted policies. The Mossel Bay Municipality's own Budget Process Schedule (Section 15(d)) states that the purpose of the April ward meetings is to "Inform and **obtain** public input/comment on draft IDP, Budget and tariffs" [2].

4. LEGAL ANALYSIS AND FINDINGS OF NON-COMPLIANCE

Based on the factual evidence and the legal framework, the public participation session held in Hartenbos on 21 April 2026 was legally defective and failed to comply with South African law in several material respects.

4.1 Failure to Facilitate Meaningful Participation (Violation of MSA Sec 16 & 17)

The audio recording provides irrefutable evidence that the meeting was not a genuine public hearing. Councillor van Dyk explicitly stated, "This is not a question and answer session" and "You are not going to do a formal presentation." Instructing attendees to merely "sit and watch what runs on the screens" and "take the document away" reduces the constitutional right of public participation to a passive, administrative formality. This directly contravenes the MSA's requirement for "public meetings and hearings" and the Constitutional Court's standard for meaningful engagement set in *Doctors for Life* [8].

4.2 Failure to Disclose Required Documents (Violation of MFMA Sec 22 & 17)

The municipality failed to make the full budget and its supporting documents available at the meeting. Providing only a 9-page summary while withholding the Tariff List, Budget Related Policies, and Detail Capital Plan violates Section 22(a) read with Section 17(3) of the MFMA. As established in *Afriforum v City of Tshwane*, public participation is rendered unlawful if the public is not provided with the correct and complete documents necessary to make informed representations [9].

4.3 Violation of the Principle of Legality

By refusing to hold a formal presentation or a structured question-and-answer session, the municipality violated its own Budget Process Schedule, which mandates that the meetings must "obtain" public input. The failure of an organ of state to follow its own adopted procedures is a breach of the principle of legality, rendering the process arbitrary and unlawful.

4.4 Failure to Provide Statutory Notice for Illiterate Persons (Violation of MSA Sec 21(4))

The 9-page presentation provided to attendees invited written submissions via email, post, or hand delivery. However, it failed to include the statutorily required notice that persons who cannot write may receive assistance from a municipal staff member to transcribe their comments. This omission is a direct violation of Section 21(4) of the MSA [6].

5. CONCLUSION

The public participation session conducted by the Mossel Bay Municipality in Ward 10 (Hartenbos) on 21 April 2026 for the 2026/2027 Draft Budget was unlawful.

The process failed to adhere to the Municipal Systems Act, the Municipal Finance Management Act, and established Constitutional Court jurisprudence. The explicit refusal to conduct a formal presentation or a question-and-answer session, combined with the failure to provide the complete budget documents, deprived the community of their right to meaningful public participation. Consequently, any budget or tariff increases approved on the basis of this flawed process may be subject to legal challenge and review by a competent court.

REFERENCES

[1] Mossel Bay Municipality. (2026). Draft IDP and Budget 2026-27 Ward 10 - Hartenbos. (Documentary Evidence).
[2] Mossel Bay Municipality. (2026). Draft Budget 2026-27. (Documentary Evidence).
[3] Eden Movement Forum. (2026). Formal Objection to the 2026-27 Budget - 21 April 2026 - Hartenbos. Retrieved from
[4] Audio Recording Transcript. (2026). 1)IntroBudgetMeetingHartenbos2026-04-21.m4a. (Transcribed and translated by Manus AI, 28 April 2026).
[5] Republic of South Africa. (1996). Constitution of the Republic of South Africa, Sections 152, 195.
[6] Republic of South Africa. (2000). Local Government: Municipal Systems Act 32 of 2000, Sections 16, 17, 21.
[7] Republic of South Africa. (2003). Local Government: Municipal Finance Management Act 56 of 2003, Sections 17, 21, 22, 23.
[8] Constitutional Court of South Africa. (2006). Doctors for Life International v Speaker of the National Assembly and Others [2006] ZACC 11.
[9] High Court of South Africa (Gauteng Division). (2025). Afriforum NPC v City of Tshwane Metropolitan Municipality and Others [2025] ZAGPPHC 911.