



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO

MPTSW69/11/19

CASE ID	70473823
CASE OFFICER	Yunus Hugo
CASE OFFICER PHONE NO	021 684 4349
DISTRICT	Cape Flats
REPORT DATE	29/10/2019

WARD 46: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 35637, CAPE TOWN, 14 AUTMN STREET SURREY ESTATE.

1 EXECUTIVE SUMMARY

Property description	Erf 35637, Cape Town.
Property address	14 Autumn Street, Surrey Estate.
Site extent	605m ²
Current zoning	Single Residential 1: Conventional housing (SR1).
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	07/10/2019.
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Yes - first floor addition to existing dwelling (domestic staff quarter) done by previous owner and unauthorised covered veranda by current owner.
Has owner applied for the determination of an administrative penalty	Yes.
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No.

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Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No.
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

Erf 35637, Cape Town is zoned Single Residential 1 (SR1) and unauthorised building work exists in the form of a first floor addition to the existing dwelling (domestic staff quarter) and a covered veranda.

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposed is attached as Annexure C and may be summarised as follows:

- Our client bought the house in 2015 with the un-authorized structure already built.
- Our client did obtain a previously approved plan and noticed that the structure is not on the plan and therefore would like to get it approved.
- Our client is aware that this structure is exceeding the height restriction and therefore a Land Use Application will all be put it for the height restriction.
- There is no negative impact on the safety, health and wellbeing to the surrounding community.
- The duration of the contravention is +-4 years.
- The extent of the contravention is 38 square meters.
- No further unlawful activity has ceased on the property and it is the first time that the owner has contravened the MPBL or any other Planning By Law.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised building work is in contravention of the DMS.
- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

Administrative Penalty: Calculation for unauthorised building work

Value per m² (as provided in the spreadsheet) x Total Unlawful area (m²) = R

5.2.1 Unauthorised building work:

<u>First floor addition</u>	
Value per m ²	= R7060
Total unlawful area	= 45.91m ²
Calculated value (value x area)	= R324 125
<u>Covered veranda</u>	
Value per m ²	= R1020
Total unlawful area	= 13.59m ²
Calculated value (value x area)	= R13 861.80
Total value	= R337 986.80

An amount which is not more than 100% of **R337 986.80** may be imposed as administrative penalty.

- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

a) The nature, duration, gravity and extent of the contravention

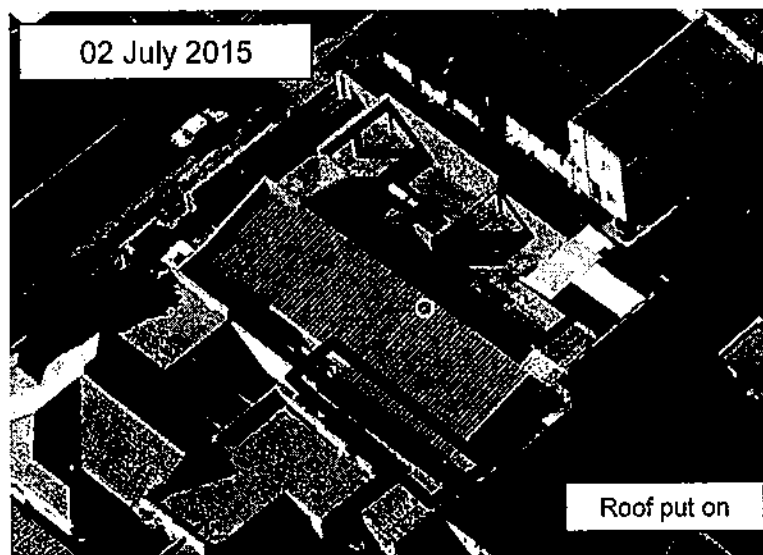
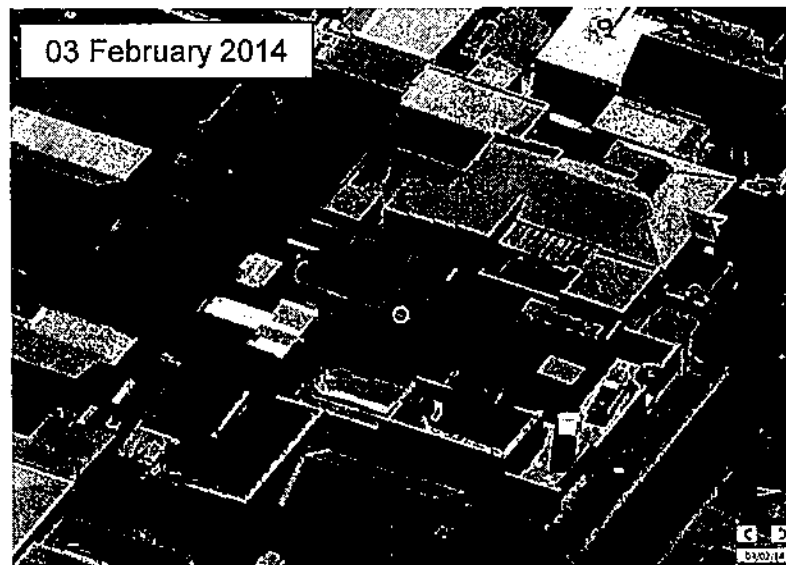
Nature – A portion of the unauthorised first floor addition contravenes the 3m common boundary building line (south and east) as a result of the height exceeding the 4m height provision. The unauthorised veranda also contravenes the 3m common boundary building line as the linear distance have already been exceeded.

Duration – Aerial imagery dated 03-02-2014 shows the unauthorised first floor addition already existing. Because the current owners only purchased in November of 2014 (with registration of the property

dated 06-01-2015) it is clear that they did not undertake the first floor construction.

The veranda was unroofed at the time (03-02-2014). Aerial imagery dated February 2015 still shows the veranda being unroofed but this was built by July 2015.

This indicates that the current owner constructed the covered verandah. The duration of the unauthorised building work is considered to be long.



Gravity – The first floor addition was constructed without building plan approval meaning no structural engineer involvement, therefore the structure poses a threat in terms of safety. The gravity is considered serious.

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Extent – The portion of the unauthorised building work that contravenes the Development Management Scheme measures approximately 59.5m².

b) The conduct of the person involved in the contravention

The current owner has applied for an administrative penalty for the unauthorised building work and has been very honest and apologetic regarding the unauthorised building work existing on the property.

c) Whether the unlawful conduct was stopped

Both the unauthorised first floor addition and veranda are fully constructed.

d) Whether a person involved in the contravention has previously contravened by this By-Law or any other planning law

As far as can be ascertained, the owner of the property has not previously contravened this By-law or any other planning law.

- 5.4 In view of the above considerations, this Department recommends an administrative penalty of **R200** of the value of the unauthorised building work.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 Portions of the unauthorised building works contravene the Development Management Scheme.
- 6.2 The contravention is of a high gravity and medium in extent.
- 6.3 The owner of the property has not previously contravened this By-law or any other planning law.
- 6.4 The previous owner was responsible for the first floor addition (domestic staff quarter) (45.91m²).
- 6.5 The veranda was however built by the current owner (13.59m²).

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R200** be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 35637, Cape

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Town with regard to the unauthorised building work as per the plan attached hereto as annexure B

ANNEXURES

Annexure A Locality Plan: Metro context
Annexure A-1 Locality Plan: Local context
Annexure B Site Development Plan showing building contraventions
Annexure C Motivation



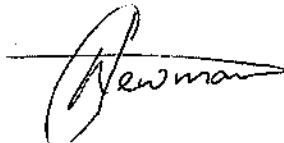
Section Head: Land Use

Comment

Name A McCann

Tel no 021 684 4341

Date 5 November 2019



District Manager

Comment

Name Chad Newman

Tel no 021 684 4310

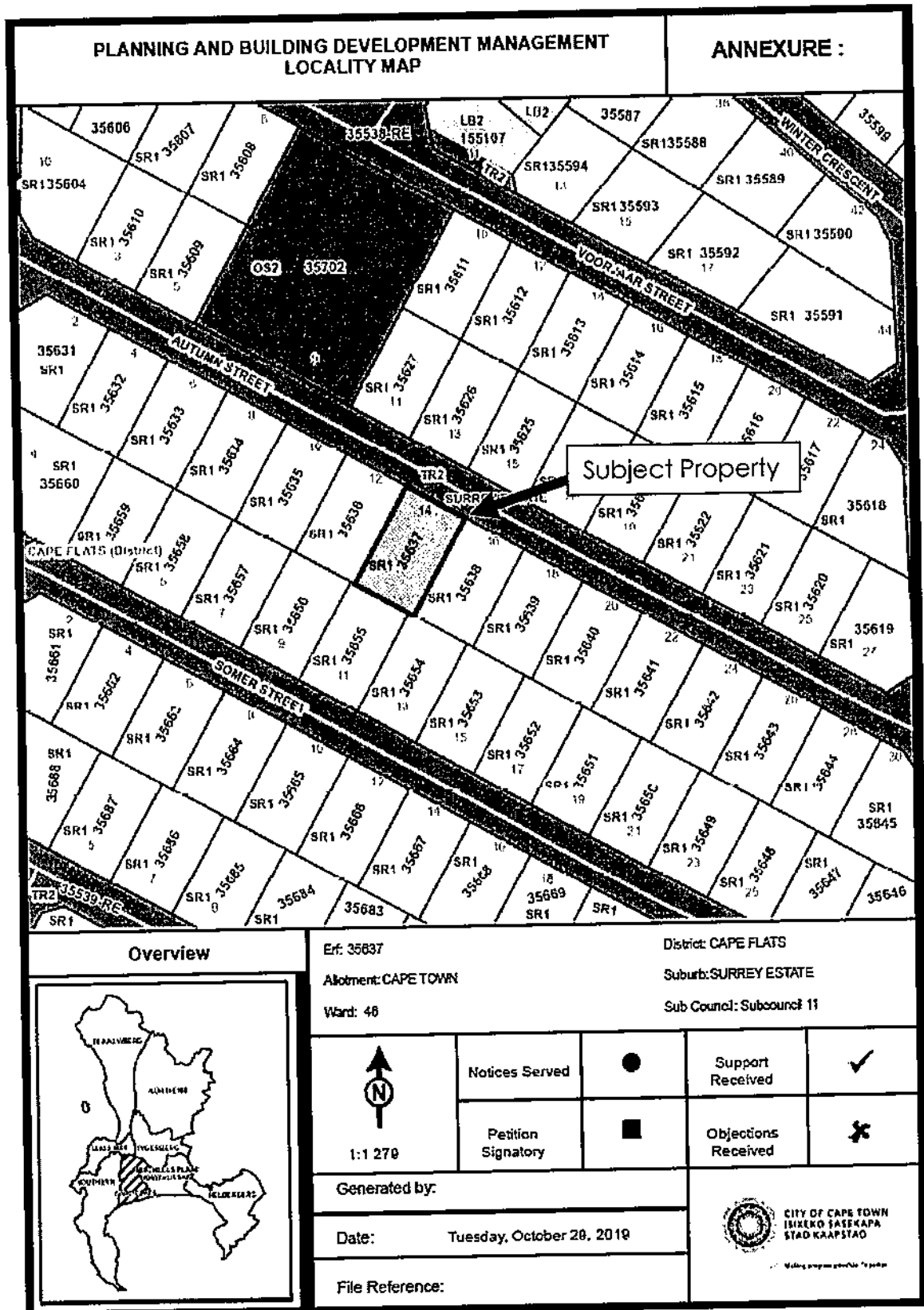
Date 5 November 2019

ANNEXURE A: LOCALITY PLAN – METRO CONTEXT

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
Overview 		Erf: 35837 Allotment: CAPE TOWN Ward: 48 District: CAPE FLATS Suburb: SURREY ESTATE Sub Council: Subcouncil 11	
 1:10 235		Notices Served 	Support Received
Generated by:		Petition Signatory 	Objections Received
Date: Tuesday, October 29, 2019		CITY OF CAPE TOWN ISIKIYO TATĖKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small>	
File Reference:			

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ANNEXURE A-1: LOCALITY PLAN – LOCAL CONTEXT



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ANNEXURE B: SITE DEVELOPMENT PLAN SHOWING CONTRAVENTION

1. The purpose of this plan is to show the proposed development and the contravention of the Resource Management Act 1991 (RMA) and the Resource Management Regulations 1992 (RMR).

2. The proposed development is a new building with a total floor area of 1,000 square metres. The building is located on a site of 2,000 square metres.

3. The contravention of the RMA and RMR is the proposed development of a new building without the necessary resource consent.

4. The proposed development is a contravention of the RMA and RMR because it is a new building and it is located on a site that is not zoned for residential development.

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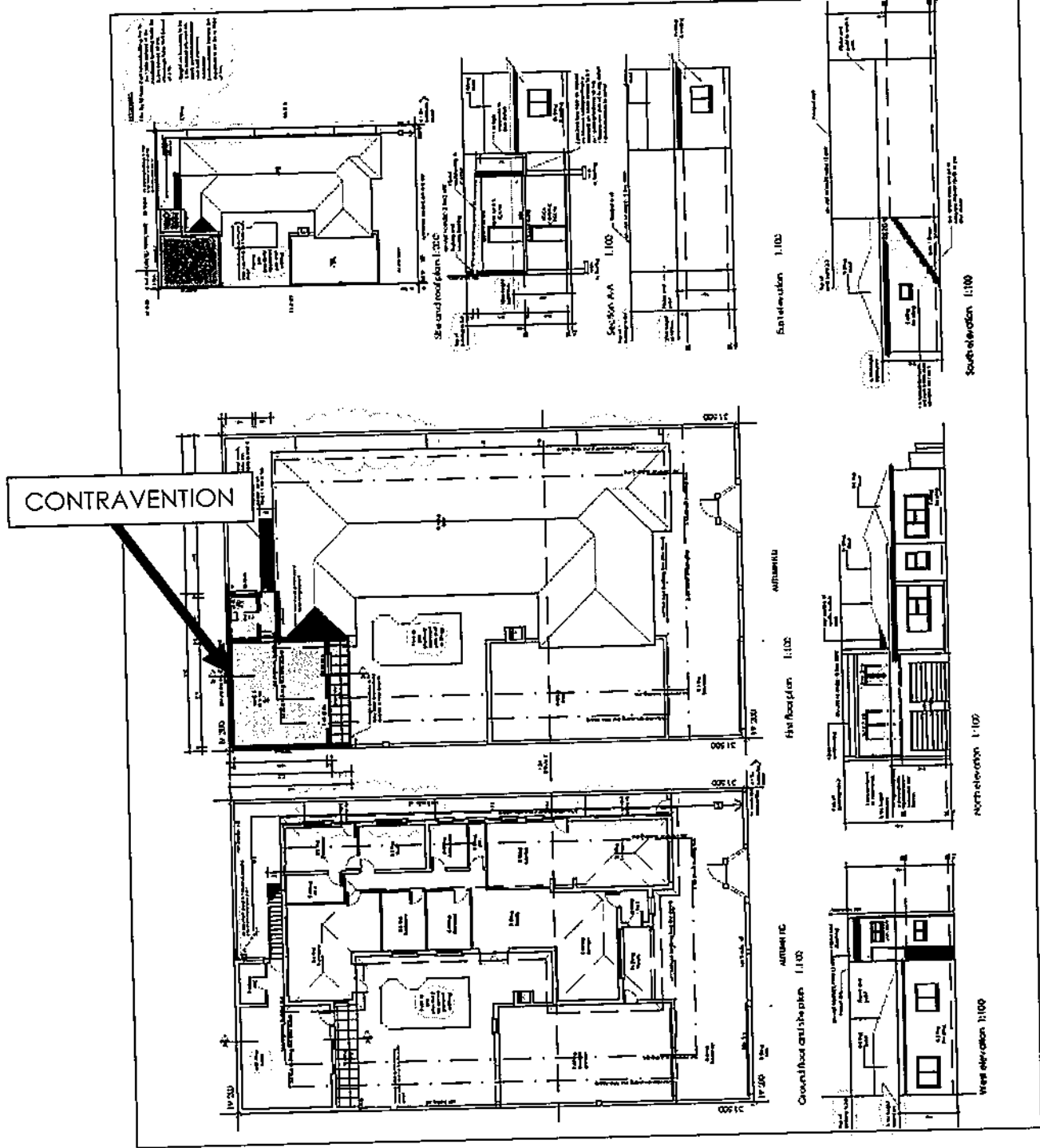
26. The proposed development is a contravention of the RMA and RMR because it is a new building and it is located on a site that is not zoned for residential development.

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ANNEXURE C: MOTIVATION



a r c h i t e c t s

Greenford office Estate, Block L | Punters Way | Kenilworth 7708
 Tel: 021 686 7798 | Fax: 086 6016297
info@izearch.co.za

HOUSE Niftagodien: Erf 35637 GREENHAVEN

Attention:	LUM dept
From	Ebrahim Osman
Date	05 September 2019
Subject	UN-AUTHORISED WORKS MOTIVATION
Number of pages including this one	1

MOTIVATION FOR UN-AUTHORISED WORK ON ERF 35637, AUTUMN ROAD, LANSDOWNE

Our motivation is as follows:

1. Our client bought the house in 2015 with the Un-authorized structure already built.
2. Our client did obtain a previously approved plan and noticed that the structure is not on the plan and therefore would like to get it approved.
3. Our client is aware that this structure is exceeding the height restriction and therefore a Land Use Application will all be put it for the height restriction.
4. It is compatible with surrounding uses and activities.
5. There is no significant additional strain on the external environmental services.
6. There is no negative impact on the safety, health and wellbeing to the surrounding community.
7. There is no Heritage impact.
8. There is no negative impact on the traffic parking, transport network.
9. The duration of the contravention is +4 years.
10. The extent of the contravention is 38 square meters.
11. No further unlawful activity has ceased on the property and it is the first time that the owner has contravened the MPBL or any other Planning By Law.

We trust that our motivation above is found to be favourable. Please contact us if there are any queries with regards to this document.

Kind regards,

Ebrahim Osman (Director)
 JZE ARCHITECTS