

27. 斜坡維修

MAINTENANCE OF SLOPES

A. 批地文件規定，期數中的住宅物業的擁有人須自費維修任何斜坡

1. 有關規定的條款 :-

(i) 批地文件特別批地條款第(36)條規定：

- (a) 倘若為了或有關該地段或其任何部分之形成、平整或發展或根據批地文件買方須完成之任何其他工程或因任何其他目的，於該地段內或任何政府土地中現時或以往曾經進行任何削走、移除或移後任何土地、或任何建造或填土或任何斜坡處理工程，不論以何種形式、亦不論有否獲得署長事先書面同意，買方須自費進行及建造為保護及支撐該地段內之土地及任何毗連或毗鄰政府土地或已租出土地及排除及防止其後發生之任何崩塌、山崩或下陷而當時或日後任何時間所須之斜坡處理工程，護土牆或其他支撐、保護、排水或附屬或其他工程。買方須於批地文件的批地年期內所有時間自費保養該土地、斜坡處理工程、護土牆或其他支撐、保護、排水或附屬或其他工程，以令其保持修葺良好堅固和狀況良好以令署長滿意。
- (b) 本特別批地條款第(a)條的任何規定不得影響政府在此等條款下的權利，尤其是本文特別批地條款第(35)條。
- (c) 倘若因或由於買方作出之形成、平整、發展或其他工程或因其他原因於任何時間不論在或由任何土地、在該地段內或任何毗連或毗鄰政府土地或已租出土地導致或引致崩塌、山崩或下陷，買方須自費使其回復原狀及將其修復令署長滿意，並須彌償政府、其代理及承建商因該崩塌、山崩或下陷而導致、蒙受或招致之所有費用、收費、損害賠償、訴求及申索。
- (d) 除了批地文件規定就任何違反此等條款的任何其他權利或補救之外，署長有權以書面通知要求買方進行、建造及保養該等土地、斜坡處理工程、護土牆、或其他支撐、保護、及排水或附屬或其他工程，或使其回復原狀及修復任何崩塌、山崩或下陷。倘若買方在該通知指定期限內忽視或未能遵守該通知以令署長滿意，署長可立即執行及進行任何必須之工程而買方須應要求向政府付還有關費用連同任何行政或專業費用及收費。

(ii) 批地文件特別批地條款第(49) 條規定：

- (a) 買方確認該土地可能由於該地段的範圍內及該地段範圍外以綠色加交叉黑斜線顯示於批地文件所夾附圖則上(下稱「綠色加交叉黑斜線範圍」)的天然山坡性質而受山泥傾瀉和巨石下墜的危害所影響。
- (b) (i) 買方須於2017年9月30日或之前或署長批准的其他期限自費進行及完成令署長全面滿意，於該地段及綠色加交叉黑斜線範圍內的岩土勘測(下稱「岩土勘測」)，以便研究天然山坡山泥傾瀉危害。

(ii) 岩土勘測結果須包括一份將由署長批准的緩解提議以作為進行、完成及保養所有需要於該地段內及於綠色加交叉黑斜線範圍上建造的緩解及鞏固工程及相關工程、提供通道以便日後保養已完成的緩解及鞏固工程(該通道提供下稱「維持通道」)，以保障任何現已興建或將興建於該地段上的一幢或多幢建築物及住客或佔用人、其真正的賓客、訪客和獲邀進入者免受由於該地段及綠色加交叉黑斜線範圍山泥傾瀉及巨石下墜的危害。

(iii) 於該地段外或綠色加交叉黑斜線範圍上的任何維持通道提議必須受制於署長事先書面批准的約束及如經已批准，須作為已經署長絕對酌情決定的批准或要求的緩解提議之一部分(下稱「經批准緩解提議」)及甚至那時，署長有絕對酌情決定以書面通知要求買方自費於本協議任何時間內重置或消除於本地段外及綠色加交叉黑斜線範圍上的任何維持通道。

(iv) 除非得到署長事先書面批准，任何土地勘測、緩解及鞏固工程及相關工程，及建造維持通道不能於綠色加交叉黑斜線範圍上或政府土地上進行。

(c) 買方須於2022年9月30日或之前或署長批准的其他期限，自費進行及完成令署長全面滿意，根據經批准緩解提議的該等緩解及鞏固工程及相關工程及維持通道(該等於該地段內的緩解及鞏固工程及相關工程、及維持通道以下統稱「內部工程」及該等於綠色加交叉黑斜線範圍或任何政府土地上的緩解及鞏固工程及相關工程、及維持通道以下統稱「外部工程」)。

(d) 買方現確認及同意除非買方已證明因技術性原因，包括但不限於岩土及安全原因，工程為嚴格地需要及不能避免至署長全面滿意，否則不能進行外部工程。署長有絕對酌情決定於批准該等工程時施加其認為合適的條款及條件。

(e) 買方現確認及同意已進行的岩土勘測及外部工程為一次性質及於該等工程完成令署長全面滿意前，受山泥傾瀉和巨石下墜危害的任何興建於該地段上或該地段內任何範圍之任何建築物的所有部分並不能被佔用或使用。

(f) (i) 買方在協議的所有時間內須自費保養內部工程及外部工程修葺良好堅固和狀況良好令署長全面滿意，以確保內部工程及外部工程能繼續發揮其設定的作用。

(ii) 保養工程包括但不限於清理下墜於內部工程或外部工程或於本特別批地條款第(g)條所指的天然山坡危害緩解和鞏固工程圖則上所示的該地段或政府土地的山泥傾瀉泥土或巨石。

(iii) 如買方違反責任，沒有按規定保養內部工程及外部工程，除政府可針對買方而具有的權利和補救外，署長亦有權以書面通知要求買方在署長絕對酌情決定認為適當的限期內進行該等保養工程。倘若買方在該通知指定限期內忽視或未能遵守該通知令署長滿意，署長可立即執行及進行所需的保養工程而買方須應要求向政府付還有關費用連同任何行政和專業費用及收費。

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- (g) 買方須自費到土地註冊處就該土地註冊已獲署長批准的圖則，顯示內部工程及外部工程的位置、性質和涵蓋範圍以及該地段及政府土地內買方可能須要或被要求進行保養工程的位置和範圍，包括於該地段及政府土地範圍根據本特別批地條款第(f)條買方可能須要或被署長要求進行清理山泥傾瀉泥石或巨石的範圍及維持通道(有關圖則下稱「天然山坡危害緩解和鞏固工程圖則」)。
- (h) 岩土勘測、內部工程及外部工程須全面遵從《建築物條例》，其任何附屬規例及任何修訂法例的規定及任何其他相關法例。
- (i) 為進行岩土勘測、進行及完成、視察及保養內部工程及外部工程為目的，買方有權由任何政府土地進出綠色加交叉黑斜線範圍及任何存在外部工程現已興建或將興建在上的政府土地而買方可能被要求或將被要求進行保養工程，包括受制於署長絕對酌情決定而可能施加的該等條款及條件清理於內部工程或外部工程上的山泥傾瀉泥石或巨石。
- (j) 倘因進行岩土勘測或因進行、視察及保養內部工程或外部工程而導致或令綠色加交叉黑斜線範圍、任何其他政府土地或任何該地段以外土地任何損害，買方須自費於署長規定時限內將其修復令署長全面滿意。
- (k) 買方須就其根據本特別批地條款正在進行或一直進行的工程或買方進行岩土勘測或內部工程及外部工程的設計、建造及保養的任何遺漏、疏忽或缺失，包括但不限於財產的損害或損失、喪失生命或身體受傷，直接或間接產生的所有責任、損失、損害、索償、開支、費用、收費、訴求、訴訟及法律程序向政府彌償，並確保其免責。

(iii) 一份日期為2019年9月5日，以註冊摘要號碼19102901120013於土地註冊處註冊的通知書(「通知書」)再作規定，當按照批地文件特別批地條款第(49)(c)條完成外部工程(根據批地文件特別批地條款第(49)(c)條所界定釋義)，買方將沒有義務根據批地文件特別批地條款第(49)(f)保養位於綠色加交叉黑斜線範圍內於通知書所夾附圖則以綠色加黑點顯示的部分內(「該範圍」)的內部工程，而買方根據批地文件特別批地條款第(49)(i)條於該範圍的通行及進出權將終止。

2. 期數中的每名擁有人均須分擔維修工程的費用。

3. 顯示該斜坡及已經或將會在期數所位的土地之內或之外建造的任何護土牆或有關結構物的圖則，已載於本節末頁。

B. 擁有人自費就期數維修任何斜坡的承諾

不適用。

C. 根據公契，期數的管理人獲擁有人授權進行維修工程

根據公契，期數的管理人獲擁有人授權聘請適當合資格人員以遵守批地文件並按照土力工程處發出的「岩土指南第五冊——斜坡維修指南」(以其不時修訂或取代為準)及《斜坡維修手冊》，以及按照由恰當政府部門不時發出有關斜坡、護土牆及相關構築物的所有指南，檢查、保存及保養任何斜坡及護土牆，並向所有擁有人收取因管理人進行這等修葺、維修及任何其他工程而合法地已招致或將會招致的一切費用。

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A. The land grant requires the owners of the residential properties in the Phase to maintain any slope at their own cost

1. The terms of requirement :-

(i) Special Condition No.(36) of the Land Grant stipulates that:

- (a) Where there is or has been any cutting away, removal or setting back of any land, or any building-up or filling-in or any slope treatment works of any kind whatsoever, whether with or without the prior written consent of the Director, either within the lot or on any Government land, which is or was done for the purpose of or in connection with the formation, levelling or development of the lot or any part thereof or any other works required to be done by the Purchaser under these Conditions, or for any other purpose, the Purchaser shall at his own expense carry out and construct such slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works as shall or may then or at any time thereafter be necessary to protect and support such land within the lot and also any adjacent or adjoining Government or leased land and to obviate and prevent any falling away, landslip or subsidence occurring thereafter. The Purchaser shall at all times during the term granted under the Land Grant maintain at his own expense the said land, slope treatment works, retaining walls or other support, protection, drainage or ancillary or other works in good and substantial repair and condition to the satisfaction of the Director.
- (b) Nothing in sub-clause (a) of this Special Condition shall prejudice the Government's rights under these Conditions, in particular Special Condition No.(35) hereof.
- (c) In the event that as a result of or arising out of any formation, levelling, development or other works done by the Purchaser or owing to any other reason, any falling away, landslip or subsidence occurs at any time, whether in or from any land, within the lot or from any adjacent or adjoining Government or leased land, the Purchaser shall at his own expense reinstate and make good the same to the satisfaction of the Director and shall indemnify the Government, its agents and contractors from and against all costs, charges, damages, demands and claims whatsoever which shall or may be made, suffered or incurred through or by reason of such falling away, landslip or subsidence.
- (d) In addition to any other rights or remedies provided in the Land Grant for breach of any of these Conditions, the Director shall be entitled by notice in writing to call upon the Purchaser to carry out, construct and maintain the said land, slope treatment works, retaining walls, or other support, protection, and drainage or ancillary or other works or to reinstate and make good any falling away, landslip or subsidence, and if the Purchaser shall neglect or fail to comply with the notice to the satisfaction of the Director within the period specified therein, the Director may forthwith execute and carry out any necessary works and the Purchaser shall on demand repay to the Government the cost thereof, together with any administrative and professional fees and charges.

(ii) Special Condition No.(49) of the Land Grant stipulates that:

- (a) The Purchaser hereby acknowledges that the lot may be affected by landslide and boulder fall hazards arising from areas within the lot and the area outside the lot shown coloured green cross-hatched black on the plan annexed to the Land Grant (hereinafter referred to as "the Green Cross-hatched Black Area") due to the nature of the natural terrain.

- (b) (i) The Purchaser shall on or before the 30th day of September 2017 or such other date as may be approved by the Director at his own expense carry out and complete in all respects to the satisfaction of the Director a geotechnical investigation (hereinafter referred to as "the Geotechnical Investigation") within the lot and the Green Cross-hatched Black Area for the purpose of studying the natural terrain landslide hazards.
- (ii) The findings of the Geotechnical Investigation shall include a mitigation proposal to be approved by the Director for carrying out, completing and maintaining all necessary mitigation and stabilisation works and associated works, access provisions for the subsequent maintenance of the completed mitigation and stabilisation works (such access provisions are hereinafter referred to as "Maintenance Access"), to be constructed within the lot and on the Green Cross-hatched Black Area so as to protect any building or buildings erected or to be erected on the lot and residents or occupiers therein and their bona fide guests, visitors or invitees from landslide and boulder fall hazards arising from the lot and the Green Cross-hatched Black Area.
- (iii) Any Maintenance Access proposed outside the lot or on the Green Cross-hatched Black Area shall be subject to the prior written approval of the Director and if approved, shall become part of the mitigation proposal as approved or required by the Director in his absolute discretion (hereinafter referred to as "the Approved Mitigation Proposal") and even then the Director has the absolute discretion by notice in writing to require the Purchaser at his own expense to relocate or remove any Maintenance Access outside the lot and on the Green Cross-hatched Black Area at any time during the term hereby agreed to be granted.
- (iv) No ground investigation, mitigation and stabilisation works and associated works, and works for constructing the Maintenance Access shall be carried out on the Green Cross-hatched Black Area or on any Government land without the prior written approval of the Director.
- (c) The Purchaser shall, at his own expense on or before the 30th day of September 2022 or such other date as may be approved by the Director, carry out and complete in all respects to the satisfaction of the Director such mitigation and stabilisation works and associated works and the Maintenance Access in accordance with the Approved Mitigation Proposal (such mitigation and stabilisation works and associated works, and the Maintenance Access within the lot are hereinafter collectively referred to as "Inside Works" and such mitigation and stabilisation works and associated works, and the Maintenance Access on the Green Cross-hatched Black Area or any Government land are hereinafter collectively referred to as "Outside Works").
- (d) The Purchaser hereby acknowledges and agrees that no Outside Works shall be carried out unless the Purchaser shall have demonstrated in all respects to the satisfaction of the Director that those works are strictly necessary and unavoidable for technical reasons including but not limited to geotechnical and safety grounds. The Director may, at his sole discretion, approve such works subject to such terms and conditions as he sees fit.

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- (e) The Purchaser hereby acknowledges and agrees that Geotechnical Investigation and the Outside Works so carried out are one-off and no part of any building erected on the lot or any area within the lot affected by landslide and boulder fall hazards shall be occupied or used before completion of such works in all respects to the satisfaction of the Director.
 - (f)
 - (i) The Purchaser shall, at all times during the term hereby agreed to be granted, maintain at his own expense the Inside Works and the Outside Works in good and substantial repair and condition in all respects to the satisfaction of the Director so as to ensure that the Inside Works and the Outside Works shall continue to perform their designed functions.
 - (ii) The maintenance works shall include but not be limited to clearance of landslide debris or boulders fallen onto the Inside Works or the Outside Works or onto the areas of the lot or the Government land shown on the Natural Terrain Hazard Mitigation and Stabilization Works Plan referred to in sub-clause (g) of this Special Condition.
 - (iii) In addition to any rights or remedies the Government may have against the Purchaser for breach of the Purchaser's obligations to maintain the Inside Works and the Outside Works, the Director shall be entitled by notice in writing to call upon the Purchaser to carry out such maintenance works within a period as the Director shall in his absolute discretion deem fit. If the Purchaser shall neglect or fail to comply with such notice to the satisfaction of the Director within the period specified therein, the Director may forthwith execute and carry out the required maintenance works and the Purchaser shall on demand repay the Government the cost thereof, together with any administrative and professional fees and charges.
 - (g) The Purchaser shall at his own expense register at the Land Registry against the lot a plan approved by the Director indicating the locations, nature and scope of the Inside Works and the Outside Works and the location and extent of the areas of the lot and the Government land on which the Purchaser may require or be required to carry out the maintenance works, including the areas of the lot and the Government land where the Purchaser may require or be required by the Director to carry out clearance of landslide debris or boulders under sub-clause (f) of this Special Condition and the Maintenance Access (which plan is hereinafter referred to as "the Natural Terrain Hazard Mitigation and Stabilization Works Plan").
 - (h) The Geotechnical Investigation, the Inside Works and the Outside Works shall in all respects comply with the Buildings Ordinance, any regulations made thereunder, any amending legislation and any other relevant legislation.
 - (i) For the purpose only of carrying out the Geotechnical Investigation, the carrying out and completing, inspecting and maintaining the Inside Works and the Outside Works, the Purchaser shall have the right of ingress and egress to and from any Government land inside the Green Cross-hatched Black Area and any Government land with the Outside Works erected or to be erected thereon where he may require or be required to carry out maintenance works, including clearance of landslide debris or boulders fallen onto the Inside Works or the Outside Works subject to such terms and conditions as may be imposed by the Director at his sole discretion.
 - (j) In the event that as a result of or arising out of carrying out the Geotechnical Investigation or as a result of or arising out of carrying out, inspecting and maintaining the Inside Works or the Outside Works, any damage is done to the Green Cross-hatched Black Area, any other Government land or any land outside the lot, the Purchaser shall make good such damage at his own expense within such time limit as shall be stipulated by the Director and in all respects to the satisfaction of the Director.
 - (k) The Purchaser shall indemnify and keep indemnified the Government from and against all liabilities, losses, damages, claims, expenses, costs, charges, demands, actions and proceedings whatsoever arising whether directly or indirectly out of or in connection with any works being carried out or having been carried out by the Purchaser pursuant to this Special Condition or any omission, neglect or default by the Purchaser in carrying out the Geotechnical Investigation or in the design, construction and maintenance of the Inside Works or the Outside Works including but not limited to any damage to or loss of properties, loss of life and personal injuries.
 - (iii) A Notification Letter dated 5 September 2019 and registered in the Land Registry by Memorial No.19102901120013 (the "Notification Letter") further stipulates that upon completion of the Outside Works (as defined under Special Condition No.(49)(c) of the Land Grant) in accordance with Special Condition No.(49)(c) of the Land Grant, the Purchaser shall have no obligation to maintain the Outside Works within the portion of the Green Cross-hatched Black Area (as defined in Special Condition No.(49)(a) of the Land Grant) as shown coloured green stippled black on the plan attached to the Notification Letter ("the Area") under Special Condition No.(49)(f) of the Land Grant and the Purchaser's right of ingress and egress to and from the Area under Special Condition No.(49)(i) of the Land Grant shall cease.
- 2. Each of the owners of the Phase is obliged to contribute towards the costs of the maintenance work.
 - 3. The plan showing the slope, retaining wall or related structures constructed, or to be constructed, within or outside the land on which the Phase is situated is set out at the end of this section.
- B. Owner's undertaking to maintain any slope in relation to the Phase at that owner's own cost**
- Not applicable.
- C. Under the Deed of Mutual Covenant, the manager of the Phase has the owners' authority to carry out the maintenance work**
- Under the Deed of Mutual Covenant, the Manager of the Phase has the owners' authority to engage suitable qualified personnel to inspect keep and maintain the Slopes and Retaining Walls in compliance with the Government Grant and in accordance with the "Geoguide 5 – Guide to Slope Maintenance" issued by the Geotechnical Engineering Office (as amended or substituted from time to time) and the Slope Maintenance Manual and all guidelines issued from time to time by the appropriate government department regarding the maintenance of slopes, retaining walls and related structures and to collect from the Owners all costs lawfully incurred or to be incurred by the Manager in carrying out such maintenance, repair and other works.

27. 斜坡維修 MAINTENANCE OF SLOPES

發展項目的斜坡圖
SLOPE PLAN OF THE DEVELOPMENT

圖例 Legend:

斜坡及護土牆
Slopes and retaining walls

發展項目的地盤界線
Site Boundary of the Development

比例 0 1 2 3 4 5 10 米/M
Scale

