

## Access rights – the radical road at Holyrood out of bounds

### Description



The Scottish Parliament visible through the fenced off area at the north end of the Radical Road. Photo Credit Angus Miller.

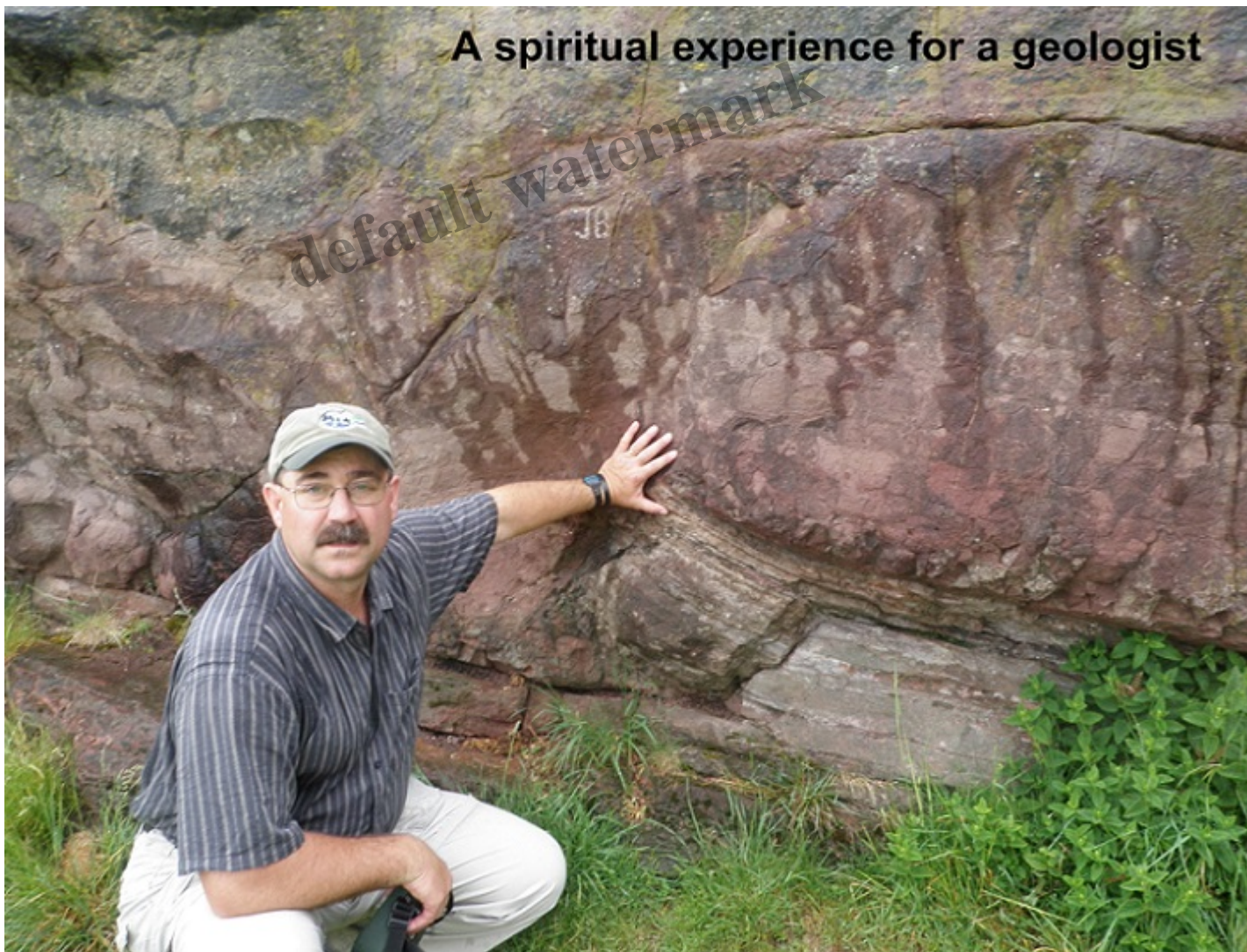
When the Scottish Parliament resumes in Edinburgh on Monday, MSPs should go and take a look at the access problem that is visible from their doorstep. The Radical Road below Salisbury Crags has now been closed by Historic and Environment Scotland for almost three years following a rockfall. The prolonged closure raises issues of national importance, issues about how we invest in and manage access, which have implications for the rest of Scotland

## A heritage path of considerable significance

The Radical Road owes its existence to Sir Walter Scott who, a couple of years after the Radical War of 1820 ([see here](#)), suggested that unemployed weavers could be used to construct a path under Salisbury Crags. It's a route with history and one which one would think any MSP in the Scottish Parliament with a concern for social justice would be keen to preserve. The leaders of the Weavers rebellion were hung and then beheaded *"for no other sin but seeking the legitimate rights of our ill used and down trodden beloved Countrymen"* while a number of others were transported to penal colonies in Australasia but later pardoned.

Once built, as Sir Walter Scott intended, the Radical Road offered stunning views out over the Old and New Towns.

The Radical Road provides access to "Hutton's Section", which played a crucially important role in the history of the earth sciences and attracts geologists from all over the world.



James Hutton (1726-97) used this section to show that the pink rock, which now forms Salisbury crags, must have once been molten and forced its way round and through the older striped rock

which has been forced upwards. Until Hutton, it was commonly believed that igneous rocks crystallized out of the sea. Using evidence from this and other sites, Hutton was able to demonstrate that the earth was far older than anyone in Christendom had thought. Photo credit Tim Gunderson, internet.

The Radical Road also passes beneath a number of quarries that operated from the 16th Century, with the stone being used all over Edinburgh and being exported for a time to pave the streets of London. Public concern about the impact of the quarrying and a number of legal cases eventually resulted in it being banned by Act of Parliament in 1831, a very early example of a successful environmental campaign.

All of this means the Radical Road is one of the most historic paths in Scotland in what is an outstanding setting. It is entirely fitting therefore that it is managed by Historic and Environment Scotland on behalf of the Scottish Government. But why is a world class tourism attraction still closed?

### **The reasons for the closure are still secret**

In September 2018 an estimated 50 tonnes of rock fell from Salisbury Crags, some of which reached the northern section of the Radical Road. An excellent article from the BBC in July 2019 ([see here](#)) describes the background – 27 significant rock fall incidents had been recorded around Holyrood Park since 2007, 17 of which had been above Radical Road path – and the recommendations of a geo-technical from Fairhurst which was commissioned following the rock fall. This was completed in March 2019, obtained by the BBC through a Freedom of Information Request and still does not appear to be publicly available (my search on the Historic Environment Scotland website came up blank).

Sadly, HES is yet another public body which does not openly publish its Board meeting papers but only its minutes ([see here](#)) and there is no indication of what may have been discussed in “Closed Session”. While I have found references in these to the Radical Road being closed – and another incident where a man was injured in November 2018 by a falling rock from Edinburgh Castle – I cannot find anything that explains HES’ plans for the Radical Road or why it is still fenced off three years later (the barriers are now far more comprehensive than those originally installed). One minute does state:

*9. Members discussed Board appetite and approach to risk, particularly in terms of the relationship between the aims of ensuring access and managing risk. The matter should come back to the Board for further discussion in due course. The risk of rock fall should be considered by ARAC (Audit, Risk and Assurance Committee) as the possible subject of a ‘deep dive’ discussion.”*

The Audit, Risk and Assurance Committee does not publish their minutes so the outcome of their considerations is not known. That is wrong, it appears those deliberations may have had significant implications for the ability of the public to enjoy the Radical Road.

Recently, in June 2021, the HES Board Minute noted under Health and Safety:

*“The Board discussed the unusual nature of Holyrood Park in terms of HES’ overall portfolio, and the correspondingly high number of incidents and near misses recorded, demonstrating the different mitigation and management measures required. In future, incidents occurring in the park will be disaggregated to demonstrate the differences.”*

So what do the Board believe are the different management and mitigation measures required for Holyrood Park?

The only information on the HES webpage for Holyrood Park ([see here](#)) is *“Please be aware the Radical Road footpath and the Low Road between the Commonwealth Pool roundabout and Duddingston are currently closed”*.

This lack of public information makes informed comment on the “closure of the radical road” difficult. But is all the more reason why MSPs should now be demanding the HES accounts publicly for its actions..

## **Health and Safety and Access Rights**

Whatever the legal basis for HES doing so, I believe it was right that following the rockfall they advised the public not to walk the Radical Road until they had investigated the risks. While no-one would expect owners/managers of mountain crags to do so, this was in a public park and, as the BBC quoted from the Fairhurst report, *“notable number of visitors using the Radical Road means exposure to the hazard [of rock fall] has increased”*. HES clearly had a duty of care to those visitors, needed time to assess the risks but it then should have produced a plan of action. Given the importance of the route and the site that should have happened quickly.

Unfortunately, HES has not even made its assessment of those risks public. Instead, we know from the BBC coverage two years ago that the Fairhurst Report ruled out strengthening the rockface as “prohibitively expensive”. It also considered containment netting but then concluded that closing the Radical Road would be the *“most effective and economical means of reducing/removing rock fall risk entirely”*. If the policy objective was to remove “risk entirely”, all access to the countryside would be banned and everyday life, from going up and down stairs to crossing roads – both major causes of accidents – would become impossible. If the HES Board has not rejected the recommendation, they should have done.

The evidence suggests that HES has failed to take a proportionate approach to risk in this case. Most of the rockfall danger appears to be at the northern end of Salisbury Crags – if that is not so HES should publish the evidence that shows otherwise. Moreover, the southern part of the Radical Road is situated well away from the crags, partly because of the topography but also because of the quarries.



Hutton's section is the lower sill of rocks – note the interpretation panel – and is located well away from the main crags. The Radical Road is even further away. Photo Credit Angus Miller.

Hutton's Section provides a good example. Unless geo-technical surveys have revealed the whole section of cliff above is likely to collapse – in which case why are the public still “allowed” to walk along the top – HES appears to have little justification for fencing it off from the public. If surveys have stated there is a risk from falling rocks (as opposed to cliff collapse) why not relocate the fence so it runs between Hutton's Section and the main crag protecting it from stonefall? It couldn't look any worse.

In terms of tourism, this obstruction to access is an absolute disaster. Imagine the disappointment of travelling half way round the world to see these rocks and then coming across the fence. I suspect not a few geologists, faced with the fence, will have decided to scramble down the crags above – does HES think that is safer? I have heard the Ranger Service, if asked, will let people in. But if its safe enough for them, its safe enough for anyone and where is this facility advertised?

Similar arguments apply for the whole of the southern part of the Radical Rd and the land above as far as the main quarry, including the climbing areas. In short HES appears to have fenced off from far

more land than is needed to keep the public safe.

If this is right, the question then is what HES should be doing with the part of the Radical Road where there are more significant risks? One option, the radical option, would be to let the general public take their own informed decisions about the risks. Public Authorities have generally been reluctant to do this out of fear of being sued. But, if there were gates and signs giving the dates of the various rockfalls, people could hardly claim they weren't informed of the risks. Far less information than that is provided to people going to the mountains where it is accepted people go at their own risk. The likelihood is no public authority would dare to do this without political endorsement.

Given the historic importance of the Radical Road, however – it is a fairly unique case being located where it is – it seems to me that HES should, while not trying to remove all the risks, be spending whatever is needed to reduce them to level that would be acceptable to the general public/tourist. The photo in the BBC article (link above) shows most of the September 2018 rockfall lying above the road (i.e not on it as the sign featured in the article claims). This raises questions about whether bunds or fencing, rather than netting over the rockface, might be sufficient to mitigate most of the risks? Unfortunately, there is no way to answer these questions at present due to the secrecy with which HES has approached this entire issue.

## **Is HES's attempt to close the Radical Road legal?**

After the Land Reform Act was passed Scottish Natural Heritage advised public authorities which owned and managed public parks to review any management rules and byelaws to ensure these were compatible with the legislation. Byelaws and rules which up until then had restricted access by the public were allowed to lapse. For example, public parks that had been closed at night were opened up to reflect the fact that access rights apply 24 hours a day.

But Holyrood was different to other parks and other land managed by public authorities. It had been a Royal Park and came under the framework of The Parks Regulations Acts, 1872 to 1974. Instead of byelaws, its use is currently governed by regulations which were created by Statutory Instrument and originally approved by the UK Parliament in 1971. On the creation of the Scottish Parliament, ownership of Holyrood Park transferred from the UK Government to the Scottish Government. While the Scottish Parliament has approved various amendments to the 1971 Statutory Instrument, particularly in respect to vehicle usage in the park, it has never reviewed the legislation in the light of the Land Reform Act. Unlike byelaws, therefore, the rules that prohibit a range of activities in Holyrood Park have never been subject to public scrutiny.

The 1971 Statutory Instrument is so old that it does not appear to be online on the UK legislation website, unlike more recent amendments, and the current regulations do not appear on the HES website. But I requested a copy from the Holyrood Park Ranger Service and was sent one by return ([see here](#)) – there are clearly some great staff on the ground! Under the Park Regulations HES it does appear has some legal powers to exclude people from areas of the Park as, among the list of 32 Prohibited Acts, are:

*“(9) entering any part of the Park after having been requested by a Park Keeper or Police Constable not to do so or in contravention of a notice or sign;*

*“(11) going on any enclosure, flower bed or shrubbery whatsoever or on any lawn access to which is prohibited by notice;”*

These powers, appear to me draconian. The Regulations do not say when HES might be justified in putting up a sign prohibiting access and therefore apparently allow them to exclude people at will. This is contrary to the way other public authorities across Scotland now have to manage access.

Normally, a Public Authority wanting to exempt land from access rights would have to apply to the local Access Authority, in this case the City of Edinburgh Council (CEC). Unfortunately, it's even harder to find information on the CEC website than it is on the HES website and I could not find anything to say that HES has ever applied to exempt the Radical Road or the surrounding area from access rights.

Under the Land Reform Act every Access Authority is supposed to have a Local Access Forum (LAF) to provide advice on access issues/ Although the CEC website says their LAF meets about once every six months, dates of meetings, papers and minutes don't appear to be published. It is impossible for the public to know therefore whether the Edinburgh LAF has ever discussed the issues and, if so, what they decided.

## **What needs to happen**

In my view the Scottish Parliament needs to take a serious look at how HES is managing the land under its nose for the benefit of the public.

First, they should be asking how come HES has failed in three years to consult and provide options for managing the safety risks along the Radical Rd. Is this the Scotland we want, where one of our most outstanding walking routes is cordoned off indefinitely because a public authority has failed to produce a plan? I am sure lack of money, as well as a risk averse management culture, accounts for some of this, but what does this say about how Scotland treats its natural and historic heritage?

Second, the Scottish Parliament needs to look at what this “closure” says about the effectiveness of access rights. More specifically, it should ask why the Holyrood Park Regulations – which it is responsible for updating – have never been reviewed in the light of the Land Reform (Scotland) Act 2003 and why this “closure” three years later does not appear to have been considered by the local Access Authority.

More broadly, its time that once again the Scottish Parliament stepped onto the radical road when it comes to access rights in Scotland. There are other places where access is being blocked for health and safety reasons, most notably at present Network Rail's attempt to shut off swathes of the Scottish countryside by stopping people from using private crossing. Then there is the failure to invest in paths – the Radical Road is a good example of this – and other infrastructure to support access in Scotland. Those MSPs who staycated in Scotland over the summer should have seen all of this with their own eyes – its time they acted.

**Category**

- 1. Access rights

**Tags**

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