

# Minutes of the Ninety First Meeting of the Ethics Committee on Assisted Reproductive Technology

**29 October 2021**

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Held via zoom on 29 October 2021

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## **In Attendance**

Iris Reuvecamp	Chairperson
Paul Copland	Member
Michele Stanton	Member
Jude Charlton	Member
Tepora Emery	Member
Mary Birdsall	Member (until 10.30am)
Karaitiana Taiuru	ACART member in attendance
Helen Nicholson	Counsellor, Repromed
Lani Eagle	Counsellor, Repromed
Chenyang Wu	Counsellor, Repromed

ECART Secretariat

### **1. Welcome**

The Chair opened the meeting by welcoming all present.

Mania Maniapoto-Ngaia and Mike Legge sent their apologies for this meeting.

### **2. Conflicts of Interest**

Dr Mary Birdsall declares (on an ongoing basis) that she is a shareholder in Fertility Associates and has interests on a professional and a financial basis.

### **3. Confirmation of minutes from previous meeting**

The minutes from the 30 September 2021 meeting were confirmed.

### **4. Application E21/150 for the Creation of Embryos from Donated Eggs and Donated Sperm**

Tepora Emery opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- This application is for the creation of embryos from donated eggs in conjunction with donated sperm for use by the recipient couple. The intending parents in this application are a same sex couple who require donor eggs and donor sperm to create a child. Medical reports that support the application state that donated gametes would offer the recipient woman the best chance of a pregnancy.
- Because of the recipient woman's advanced maternal age, there is an increased risk with pregnancy, but this has been explained to her and she will receive obstetric care throughout her pregnancy. The application also noted that there is also an increased risk of preterm labour and the recipient woman has had these risks explained to her.
- The egg donor and recipient couple were matched through the clinic and have since met each other. The egg donor and partner in this application do not yet have children. She has had the risks of egg collection explained to her. Counselling reports that support the application note that the egg donor is motivated by a desire to help others and has surrogacy experience in her family. They also outline that the egg donor and partner value openness but wish to be guided by the recipient couple in terms of frequency of contact with any future children. The egg donor and sperm donor for this application do not know each other.
- There is a within family aspect to this donation as the sperm donor is related to the recipient woman. He does not intend to have any children of his own. The committee noted that the sperm donor has undergone genetic testing of his sperm and outlined genetic conditions and a familial history to be aware of. The committee was reassured that a plan is in place for the egg donor to also undertake screening to ensure that known conditions are not passed on to any resulting child/ren.
- The application notes that currently the couple whangai two young children and that the applicant's whānau are aware of and supportive of the proposed donation. Counselling reports that support the application state that all parties are highly articulate and believe they would be able to sort out any issues. If they needed support to do this, there are a number of wise family members who could assist, and they are aware also of the support that can be provided by clinic counsellors.
- All parties have been counselled on the new ACART guidelines which state that embryos created with the use of donated gametes can be donated in the future with the consent of all parties including donors, and assuming that the maximum number of allocations is not exceeded. The sperm donor is clear that this is a personal donation to his sibling, and he would not consider donating to anyone else. He understands that surplus embryos are now able to be on donated and counselling reports are clear he does not consent to this.
- Counselling reports that support the application show that the recipient couple plan to be open and transparent with a resulting child/ren and both the egg donor and partner plan to be open about the donation and support any future children to understand the decision to donate and the wider implications for their children.

### **Decision**

The Committee agreed to **approve** this application subject to confirmation that the egg donor is screened for appropriate genetic conditions.

## **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **5. Application E21/151 for the Creation of Embryos from Donated Eggs and Donated Sperm**

Paul Copland opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

#### **Issues discussed included:**

- This application is for the creation of embryos from donated eggs in conjunction with donated sperm for use by the recipient couple. Medical reports that support the application state the need for both donor eggs and sperm to be both medically advisable and to give them the best chance of a pregnancy given the advanced ages of the recipient couple.
- The recipient woman plans to carry the pregnancy. In the past she has completed a number of cycles with donor sperm along with other procedures without success and donated gametes would offer her the best chance of a pregnancy. Because of the recipient woman's advanced maternal age, there is an increased risk with pregnancy, but this has been explained to her and the application notes that she will receive obstetric care throughout her pregnancy. The application also noted that there is also an increased risk of pre-eclampsia and preterm labour. A pre-pregnancy assessment for the recipient woman is attached to the application.
- The egg donor and recipient woman are friends. The egg donor and partner in this application have children and have completed their family. Because the egg donor in this application is a personal donor, the application states that she is unlikely to donate again to others.
- The sperm donor and partner in this application do not have children. He has undergone genetic testing of his sperm and the application states that he is in good health. He has specified a maximum of 5 families for use of his donation and intends to consider the possibility of on donation in the future if applicable. The application notes that the recipient woman would be informed in the event that there are half siblings born from sperm donations to others.
- While the sperm donor is a clinic donor who is not known to the recipient couple or the egg donor, he and his partner are open to being contacted and known to any resulting child/ren.
- All parties have been counselled on the new ACART guidelines which state that embryos created with the use of donated gametes can be donated in the future with the consent of all parties, including donors and assuming that the maximum number of allocations is not exceeded.
- Counselling reports that support the application show that the recipient woman and egg donor are friends and also have the support of their close friends for the proposed donation. At the joint counselling session, it was noted that the recipient woman plans to be open and transparent with a resulting child and both the egg donor and her partner plan to be open about the donation and support any future child/ren to understand their decision to donate, and the wider implications for their children.

- All parties plan to be open with existing and future children and teach them about their connection to each other. The egg donor couple understand the implications of these donations, in that their children will have other half genetic siblings. The multi-cultural aspects of this donation were also considered and discussed by the committee.
- The committee noted that this application canvassed a discussion about supports for the recipient woman and any resulting child/ren given the recipient partners advanced parental age.
- The committee noted that testamentary guardianship of any resulting child/ren has been discussed and agreed but were unsure if the chosen guardian resided in New Zealand. The committee requested confirmation of a clear framework relating to who would care for the resulting child if neither of the intending parents were able to do so.
- The committee also again discussed the importance of openness and would like assurance that the chosen guardian would facilitate this and ensure information about the donors is shared with the child so that the child knows their genetic heritage.

### **Decision**

The Committee agreed to **approve** this application subject to confirmation that a clear plan is in place for testamentary guardianship.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **6. Application E21/152 for the Donation of eggs between family members**

Jude Charlton opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The proposed donation of eggs in this application is between sister in laws, where the recipient woman is the sister of the egg donor's partner. The committee noted that a clear reason to justify the use of donated eggs exists.
- The egg donor and partner have children and have completed their family. The application states that they are motivated by a desire to help and the relationships are described as close knit, with the parties being in regular contact.
- The issue of openness and relationships has been discussed. All parties are aware that any resulting children will be socially cousins but genetically half siblings. The parties plan to be open with all existing and resulting children and extended family and envisage that any resulting children will grow up knowing their birth story, and that the gamete donors will have the same kind of relationship of social Aunt and Uncle to any resulting children as the recipient woman has with their existing children.
- The possibility of on-donation of embryos has been discussed and all parties understand that the egg donor would need to consent to on-donation. The

application states that the donors do not feel in a position to consider this at the present time.

- All parties involved understand that the recipient woman has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **7. Application E21/153 for the Donation of eggs between family members**

Tepora Emery opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The proposed donation of eggs in this application is between sister in laws where the donor partner and recipient partner are brothers/siblings.
- The committee noted that a clear reason to justify the use of donated eggs exists, and that donated eggs give them the best chance of a pregnancy.
- The egg donor and partner have children and have completed their family. The egg donor extended an offer to donate eggs after learning of the recipient couple's long fertility journey and unsuccessful cycle. The recipients have taken time together as a couple to process the need for using donated eggs and feel they are ready to proceed down this path.
- Counselling reports that support the application note that the recipients are pleased to have found a donor who is so well known to them and already a part of their family. The committee noted that they feel well placed to sort out any disputes and have had open and honest conversations about the proposed donation and openness with existing and resulting child/ren.
- The possibility of on-donation of embryos has also been discussed, and all parties understand that the egg donor would need to consent to on-donation. The application states that the egg donor is clear that she is donating to her family members and does not consent to the on-donation of any surplus embryos created from her donation.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

## 8. Application E21/154 for Surrogacy involving an assisted reproductive procedure

Michele Stanton opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### Issues discussed included:

- The committee noted that a valid reason for a surrogacy exists and acknowledged the intending parents' difficult journey.
- The birth mother in this application and the intending parents originally met through social media and are now friends.
- The birth mother has completed her family and has had the risks of carrying a surrogate pregnancy explained to her. The medical report that supports the application notes that she has had healthy pregnancies with previous caesarean section deliveries.
- The birth mother has also disclosed her mental health history and a comprehensive report from a specialist included with this application indicates that there are no psychological barriers to her gestating a pregnancy for the intending parents.
- Counselling sessions have canvassed the issue of openness and transparency with any resulting child/ren and note that the birth mother would like to retain contact with the intending parents and any child and wishes this to unfold organically. The birth mother has begun introducing the concept of surrogacy to her children and hopes to help them understand that the resulting baby will belong to the intending parents. The committee noted that one of the birth mother's existing children was previously unsupportive of the proposed arrangement and that further counselling had been arranged.
- The issue of termination has been discussed in counselling and the reports note that all parties agree that the decision to terminate ultimately rests with the birth mother. The application states that the birth mother already has life insurance in place and the intending parents plan to take over the insurance for an appropriate amount of time. Testamentary guardianship has also been discussed and agreed.
- The reports in the application are complete and show the HART Act principles in this application have been respected. The counselling reports are thorough and have addressed the implications of the intended arrangement well. All parties felt that counselling had been culturally appropriate.
- Both parties have received independent legal advice and understand the legal issues involved.
- The committee noted that an adoption order in principle has not yet been received from Oranga Tamariki.

### Decision

The Committee agreed to **approve** the application subject to:

- a) counselling of the Birth Mother's children
- b) an approval letter from Oranga Tamariki
- c) obtaining clinical advice from an expert advising the Committee on potential medical risks to the birth mother, and the need for specialist obstetric care if the

application was approved and the birth mother became pregnant (plus mandated obstetric care).

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **9. Application E21/155 for Surrogacy involving an assisted reproductive procedure with donated eggs**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- In this application for surrogacy, the intending parents (IP1 and IP2) are a same sex couple who plan to use embryos created with sperm from IP2 and donated eggs in this traditional surrogacy arrangement.
- The birth parents have children and consider their family to be complete. The birth mother is the sister of IP1 and intends to use her own eggs.
- The application outlines the proposed plan for surrogacy with IUI.
- Because the birth mother is using her own eggs in the proposed arrangement, genetic screening of her eggs has been undertaken and the committee discussed the results and asked for the sperm that will be used to be genetically tested also to ensure that known conditions are not passed onto any resulting child/ren.
- The counselling report for the birth mother focuses on the important considerations for her in acting as a surrogate and egg donor exclusively for her sibling and her desire to help the intending parents to have a family.
- The intending parents are based in Australia and the birth mother lives in New Zealand. The intention is for treatment to take place in New Zealand and pregnancy and birth plans have been discussed and agreed in New Zealand. The intending parents have also engaged with Oranga Tamariki and plan to go through the formal adoption process in New Zealand. They plan to take any resulting child to Australia as soon as is medically and socially appropriate.
- The committee discussed the issue of the Covid-19 pandemic travel restrictions and the geographical distance between the parties. They also discussed the birth mother and extended families offer to care for a baby in the interim if the intending parents are unable to come to New Zealand due to changes in alert levels or to travel restrictions.
- The committee noted the counselling reports state that the birth parents have excellent family support, and pregnancy and birth plans include how the family will provide practical support to the couple and be involved in the birth mother's postpartum care.
- Counselling sessions have canvassed the topics of communication, pregnancy and birth plans, termination of pregnancy and the birth mother's rights, the parties' understanding of the adoption process and openness. The parties have informed and have the support of their immediate family for the proposed arrangement and intend to inform other family members once ethical approval is gained from ECART and a pregnancy is established.

- Guardianship is also discussed and agreed, with the birth parents agreeing to be guardians to any resulting child/ren born from this arrangement. The intending parents are also guardians to the birth parents' existing children.
- The birth mother has life insurance, and the intending parents intend to take over the payments and both parties have received independent legal advice and understand the legal issues involved.
- The intending parents intend to stay in New Zealand following the birth until the adoption is complete. They have received independent legal advice in relation to New Zealand law. Oranga Tamariki have given approval for an adoption order in principle.

### **Decision**

The Committee agreed to **approve** this application subject to:

- a) genetic counselling for the birth mother and intending parents in using her eggs in conjunction with IP2's sperm
- b) that the sperm to be used is also genetically tested
- c) specialist obstetric care for the birth mother throughout the pregnancy.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **10. Application E21/156 for Surrogacy involving an assisted reproductive procedure**

Jude Charlton opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The intending parents have embryos created with their own gametes to be used in the proposed surrogacy arrangement and the application notes a medical need for surrogacy.
- The birth parents have completed their family and the birth mother has had the risks of carrying a surrogate pregnancy explained to her. The medical report that supports the application notes that she has had healthy pregnancies in the past and currently has an elevated BMI which the committee felt should be lower before a treatment cycle takes place. She is otherwise fit and well.
- There is a within family aspect to this application as the birth mother and the intending mother are cousins. The application highlights their close relationship.
- All parties feel that counselling has been culturally appropriate. The counselling sessions have also canvassed their attitudes towards openness for existing children and with any resulting children and notes that close family are informed and supportive of the proposed arrangement.
- The reports in the application are complete and show the HART Act principles in this application have been respected. The counselling reports are thorough and have addressed the implications of the intended arrangement well. All parties felt that counselling had been culturally appropriate.

- The issue of termination has been discussed in counselling and the parties discussed and acknowledged that any such decision would ultimately be the BM's to make. The IPs acknowledged that the birth mother's health is paramount.
- Testamentary guardianship has been discussed and agreed and the intending parents also intend to pay for the birth mothers life insurance during the pregnancy.
- Both parties have received independent legal advice and understand the legal issues involved.
- The committee noted that an adoption order in principle has not yet been received from Oranga Tamariki.

### **Decision**

The Committee agreed to **approve** this application subject to the birth mother's BMI and an approval letter from Oranga Tamariki.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **11. Application E21/157 for Surrogacy involving an assisted reproductive procedure**

Michele Stanton opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The intending parents have embryos created with their own gametes to be used in the proposed surrogacy arrangement and a clear reason for surrogacy exists.
- The birth parents in this application have children and their family is complete. The birth mother has disclosed a history of mild depression following birth but is otherwise fit and well with a history of normal pregnancies and births. A report from an independent psychologist supports this application and the committee were reassured that it references the extensive support system available to the birth parents.
- The birth parents and intending parents initially met through social media and an offer of surrogacy was made. The parties have spent time building their relationship and counselling reports that support the application note that there is good communication between them.
- The reports show that openness with any resulting child/ren has been discussed and agreed between all parties.
- The issue of termination has been discussed in counselling and the parties discussed and acknowledged that any such decision would ultimately be the BM's to make. The IP's acknowledged that the birth mother's health is paramount.
- Testamentary guardianship has been discussed and agreed and the intending parents also intend to pay for the birth mothers life insurance during the pregnancy.

- Both parties have received independent legal advice and understand the legal issues involved.
- Oranga Tamariki have given approval for an adoption order in principle.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **12. Application E21/158 for Surrogacy involving an assisted reproductive procedure**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The intending parents have embryos created with their own gametes to be used in the intended surrogacy arrangement. The committee noted that a clear medical reason for surrogacy exists. For this reason, the intending parents wish to have a surrogate help them to start their family.
- The birth parents in this application have their own children and they consider their family to be complete. The application contains a medical report and pre pregnancy assessment for the birth mother which describes her pregnancy and birthing history and the risks that may arise for her in carrying a surrogate pregnancy, along with points of her medical history that are of relevance to her health and well-being.
- ECART was reassured that the medical team who care for her are mitigating any risks, including a plan for specialist obstetric care and birth plan in place for a resulting pregnancy.
- There is a within family aspect to this application for surrogacy as the birth mother and the intending mother are sisters. Counselling reports that support the application outline that the birth mother is willing to undertake a number of cycles to achieve a pregnancy and reports also observe a close relationship between them and note that they appear comfortable in managing any disputes.
- The birth parents plan for the relationship to continue between themselves and the intending parents. They envisage remaining close with ongoing contact and expect to be the "aunt and uncle" to any resulting child. They are clear that they would like to remain accessible to any resulting child/ren and would be open to talking about their involvement in the child's birth story and being open with any resulting child/ren and their existing children.
- The issue of termination has been discussed in joint counselling and the application notes that while the parties are not supportive of termination, they acknowledge that the birth mother's health is paramount, and they would consider any difficult decisions as a team and under medical advice noting that any decision relating to termination is ultimately the BM's to make.

- Both parties have received independent legal advice and understand the legal issues involved, including that the birth parents will be the legal parents of any resulting child/ren at birth.
- Testamentary guardianship has been discussed and agreed and the intending parents also intend to pay for the birth mothers life insurance during the pregnancy.
- Oranga Tamariki have given approval for an adoption order in principle.

### **Decision**

The Committee agreed to **approve** this application subject to specialist obstetric care being provided to the birth mother.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **13. Application E21/076 for Surrogacy involving an assisted reproductive procedure**

Paul Copland opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- In this application for surrogacy the intending mother has a medical condition that impacts her ability to carry a pregnancy and there is a clear medical reason for surrogacy. The intending parents plan to create embryos using their own gametes.
- When this application was first considered at the June 2021 meeting, the committee discussed the intending mother's long-term condition, and raised concerns about the severity of her illness. The committee decided that it would like to see more comprehensive information about the intending mother's condition. Members requested a letter from the intending mother's endocrinologist.
- The committee also acknowledged the difficulty in living with a long-term health condition and sought an assessment of the intending mother's psychological wellbeing from an independent specialist.
- Further information has been received in response to these queries. The committee also considered a medical report from the intending mother's specialist and general surgeon. The committee was reassured by the additional information provided regarding the intending mother's medical condition and wellbeing and agreed to approve the application.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

#### **14. Application E21/109 for Surrogacy involving an assisted reproductive procedure with donated eggs**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

##### **Issues discussed included:**

- This application for surrogacy was previously deferred at the August 2021 meeting. In this intended surrogacy arrangement, the intending parent requires both donated eggs and surrogacy to begin a family.
- At the August meeting, the Committee had a discussion about the counselling report for the birth mother which explored aspects of trauma associated with previous births and experiences of situational anxiety. As part of this discussion, the Committee requested a letter from the birth mother's GP identifying possible risks and triggers of situational anxiety and how the birth mother would be supported in the surrogate pregnancy.
- The Committee also had some concerns about the health and wellbeing of the birth mother and asked that counselling further explore any familial expectation to be a surrogate for her sibling and confirmation that specialist obstetric care will be provided to her.
- The committee noted the comprehensive response setting out the birth mother's pregnancy and birth history, addressing her emotional wellbeing and confirming that specialist obstetric care will be provided to the birth mother. An independent report from a psychologist and birth plan was also attached to the application.
- The committee was reassured by the information provided and pleased to see that there are plans in place to manage uncertainties or risks to the birth mother, and that she has a support network in place for undertaking a surrogate pregnancy.

##### **Decision**

The Committee agreed to **approve** this application.

##### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

#### **15. Application E21/104 for the Donation of eggs between family members**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

##### **Issues discussed included:**

- This application for the donation of eggs between family members was previously deferred at the August 2021 meeting.

- In its initial consideration of this application, the Committee noted that the recipient couple have said that they would wait to decide whether to be open with any child born of this assisted reproductive procedure about the role of the egg donor. While ECART accepted that the recipient couple's culture views this information as private and deeply personal, it reiterated the importance of a child being socialised from an early age about their conception story and the reasons behind it to help a resulting child to accept and feel secure with this knowledge.
- The Committee therefore agreed to defer this application to enable the recipient couple and egg donor to meet again with their counsellors to discuss the issue of information sharing of any potential child's heritage, and in particular, their genetic and cultural connections.
- The Committee also noted that the counselling reports do not make explicit whether there was discussion in relation to the egg donor's right to withdraw or vary her consent up to the point the embryos are created and was subsequently reassured that this matter has been discussed.
- In response to the Committee's decision to defer the application, further individual counselling with the egg donor has been completed and another joint counselling session with all parties was held to discuss information sharing with the potential child and to clarify the other issues raised by the committee.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **16. Application E19/53 for Surrogacy involving an assisted reproductive procedure in conjunction with embryo donation**

Mary Birdsall opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- This is an updated application to the original application for surrogacy submitted and approved by ECART in 2019. The updated application now includes embryo donation.
- The intending parents have had a difficult fertility journey with pregnancies not becoming established. They now have no embryos remaining and after being unsuccessful in their search for an egg donor, they wish to pursue embryo donation in conjunction with surrogacy as another option to help them to start their family.
- The birth parents in this application have completed their family and were approved by ECART previously in 2019 to be a gestational surrogate for the same intending parents. They report having support from their family and are happy to continue on this journey with the intending parents to help them start their family.

- The embryo donors in this application have children and note that their family is complete. They have surplus embryos created from their own gametes to donate to the recipient couple. The donor couple have no family history of any genetic conditions and the application notes that their existing children have healthy developmental milestones. The parties were initially matched through the clinic and the application states that the donor couple are motivated by a desire to help a couple who share the experiences of a difficult reproductive journey.
- Counselling reports that support the application also canvas the recipient couple's journey to accepting that they won't have a genetic connection with the potential child and, they describe shared commonalities with the donor couple in terms of ethnicity, faith and religion. Both parties have declared intentions to be open with existing children and any child/ren born of this arrangement and the donor couple are exploring available resources to assist them with these conversations. They don't yet know what ongoing contact might look like and rather than making a plan at this early stage, prefer to see how contact unfolds over time.
- Counselling reports for the recipient couple also include implications counselling for both surrogacy arrangements and embryo donation.
- The committee noted the comprehensive discussion and consideration that went into the parties discussing and making plans about how Covid-19 restrictions could impact on the proposed arrangement and at the time of birth. The committee found this additional information helpful to the application.
- The issue of termination has been discussed in joint counselling and the application notes that while the intending parents are opposed to termination, the birth mother's health is paramount. They would make any decisions as a team after receiving medical advice.
- Testamentary guardianship has been discussed and the birth mother has life insurance in place already.
- The intending parents have engaged pro-actively with Oranga Tamariki who are aware they are now to be recipients of donated embryos, and this change in circumstances is also acknowledged in the new pre-approval letter attached to this application.

## **Decision**

The Committee agreed to **approve** this application.

## **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **17. Re-application E17/36 for Embryo donation for reproductive purposes**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

## **Issues discussed included:**

- The committee considered a re-application for embryo donation for reproductive purposes.

- The committee noted that the parties previously had an application approved in 2017 and subsequently had a child from treatment.
- The recipients wish to have further treatment using the donated embryos which will be full biological siblings to their existing child.
- The donating couple report no major changes in their lives, outside of their move overseas. The donor couple remain happy with their decision to donate and have been pleased with the level of contact and communication that they have with the recipient couple and their family.
- They look forward to an ongoing relationship with the recipients in the future and wish them all the best with their ongoing family plans.

### **Decision**

The Committee agreed to **approve** this application.

### **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **18. Application E20/118 for Surrogacy involving an assisted reproductive procedure with donated eggs**

Iris Reuecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy*, and the principles of the HART Act 2004.

### **Issues discussed included:**

- The intending parents had an application for surrogacy approved in 2020 and now also require egg donation as their treatment was unsuccessful resulting in no embryos for transfer to the birth mother. Medical opinion is that they now require egg donation to give them the best chance of a pregnancy.
- The committee noted that the updated application consists of a cover letter and an updated joint counselling report for the intending parents and birth parents regarding the proposed use of an egg donor. Also attached is an updated medical report for both the intending parents and the egg donor.
- The possibility of on-donation of any surplus embryos has also been discussed, and all parties understand that the egg donor would need to consent to on-donation. The egg donor in this application is a clinic egg donor who has not yet decided whether she will donate to another recipient in the future.
- Counselling reports that support the application outline open and honest conversations, notably that the egg donor initially sought reassurance that the recipient couple could care adequately for a child during times of ill health and that guardianship was in place should the intending parents not be able to care for any resulting child. The report also states that the recipients are pleased to have found an egg donor who is fully informed of the recipient woman's medical condition and is willing to donate eggs.
- Regarding openness with existing and resulting child/ren, the recipient couple confirmed that they would inform any resulting child/ren that they were donor conceived and of their half-siblings in the egg donor's family.

## **Decision**

The Committee agreed to **approve** this application.

## **Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee's decision.

### **19. Potential application for Surrogacy involving an assisted reproductive procedure**

Mary Birsdall opened the discussion for this application.

- The committee considered a potential application where a fertility clinic sought ECART's feedback prior to putting together a full application, as to the medical suitability of the potential birth mother.
- The application notes that the proposed arrangement will be surrogacy where there is a within family aspect to the application, in that the birth mother has offered to carry a pregnancy for her sister.
- A pre pregnancy assessment for the potential birth mother was provided and the committee noted the birth mother's relevant medical history of previous pre-eclampsia and hypertension in pregnancies and currently slightly high blood pressure.
- The committee considered the long-term consequences to the birth mother to be low risk and that nothing in the information provided indicated concerns about the medical suitability of the birth mother in the proposed surrogacy arrangement.

### **20. Consideration of extended storage applications**

### **21. Correspondence**

ECART considered correspondence regarding counselling online or through telehealth, seeking guidance as to what flexibility ECART may offer regarding face-to-face vs zoom appointments under the current circumstances of Covid-19. Members acknowledged the difficulty in undertaking counselling in person wearing masks and that people may feel more comfortable via video where they can remove their mask and speak freely. ECART noted that it is the responsibility of the clinics and the counsellors to ensure that counselling is delivered in accordance with professional body guidelines and standards.

- ECART discussed a query from a treatment provider in regard to an interpretation of the HART Order. Specifically, where the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy* refer to the term cousin in the guidelines for family gametes donation and whether this refers to blood cousins or cousins through marriage also. ECART noted that the application in question was for a donation through cousins by marriage and thought that technically this would fall within the definition of cousin, requiring ECART approval as an assisted reproductive procedure. ECART decided to write to ACART, noting that cases like this are low risk and that ECART considers that the HART Order as a whole,

but in particular, the definition of family, would benefit from a comprehensive review.

- ECART discussed a legal query seeking ECART's advice regarding the importation and of embryos created with donated gametes into New Zealand. Specifically, ECART was asked for its view on the 10-family limit for donated gametes, and whether this is a limit for within New Zealand or globally. Members agreed that ECART has no jurisdiction in relation to the import or export of gametes and embryos. ECART noted that in importing or exporting gametes or embryos, clinics must adhere to:
  - HART Act principles
  - HART Act requirements (particularly requirements which describe prohibited actions in New Zealand such as payment for gametes, sex selection, and requirements about keeping information about donors and donor offspring)
  - Legislation and regulations in countries of origin and their similarity to those in New Zealand
  - Informed consent requirements in countries of origin and their similarity to those in the HART Act and the Code of Health and Disability Services Consumers' Rights.

Members noted that Covid-19 has raised many challenges for those undertaking treatment offshore and agreed to write to ACART about a number of issues that have been raised since the beginning of the pandemic, highlighting the need for guidelines on the import and export of gametes and embryos. ECART noted that ACART provided advice to the Minister on the need for guidelines on the import and export of gametes and embryos in 2014.

### **Confirmed dates for meetings**

9 December 2021

25 February 2022

Subsequent dates confirmed

### **Meeting close**

Confirmation of next meeting on Thursday, 9 December 2021.

Confirmation of ECART member in attendance at next ACART meeting on 10 December 2021. Paul Copland to attend.