**Minutes of the Eighty Eighth Meeting of the Ethics Committee on Assisted Reproductive Technology**

**8 April February 2021**

Held via zoom on 8 April 2021

**In Attendance**

Iris Reuvecamp Chairperson

Paul Copland Member

Michele Stanton Member

Mike Legge Member

Mania Maniapoto-Ngaia Member

Jude Charlton Member

Tepora Emery Member

Mary Birdsall Member

Seth Fraser ACART member in attendance

Hayley Robertson Senior Advisor, Ethics

Kirsten Forrest Senior Advisor, Ethics

Tania Siwatibau Administrator, Ethics

1. **Welcome**

The Chair opened the meeting by welcoming all present.

1. **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.

1. **Confirmation of minutes from previous meeting**

The minutes from the 11 February 2021 meeting were confirmed.

1. **Application E21/039 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:**

* The intending mother has a medical condition that impacts her ability to carry a pregnancy. The intending parents have completed an IVF cycle and intend to use the embryos created in this arrangement.
* The birth parents in this application have completed their family. There is a within family aspect to this application as the birth mother is the sister of one of the intending parents and has offered to gestate their remaining embryo. The birth mother has had the risks of carrying a surrogate pregnancy explained to her. There are no known risks to the birth mother beyond the usual risks associated with a surrogate pregnancy and they will be managed with appropriate medical care.
* The issue of termination has been discussed in counselling between all parties and the application notes that the birth mother is opposed to termination. The intending parents also intend to ensure that life insurance is in place for the birth mother before an embryo is transferred.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The counselling sessions have also canvassed their attitudes towards openness for existing children and with any resulting children and notes that the birth parents intend to be open with their children about the surrogacy arrangement.
* Oranga Tamariki assessments have resulted in the decision that an adoption order in principle is approved.

**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.

1. **Application E21/040 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 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 intend to create embryos using their own gametes through IVF following the outcome of this application.
* The birth parents in this application have completed their family. The birth mother has had the risks of carrying a surrogate pregnancy explained to her. She is healthy herself and has had previous uncomplicated pregnancies.
* The intending mother and the birth mother are close friends and the counselling reports that support the application state that all parties have an open and comfortable relationship.
* 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 intending parents also intend to ensure that life insurance is in place for the birth mother before an embryo is transferred.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The counselling sessions have also canvassed their attitudes towards openness for existing children and with any resulting children and notes that the birth parents intend to be open with their children about the surrogacy arrangement.
* The committee noted that a preliminary assessment from Oranga Tamariki was not attached to the application and asked that this letter be provided to support the application when it is available.

**Decision**

The Committee agreed to **approve** this application subject to a preliminary assessment from Oranga Tamariki.

**Actions**

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

1. **Application E21/041 for Surrogacy involving an assisted reproductive procedure**

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:**

* In this application for surrogacy a clear medical reason for surrogacy exists as the intending mother is not able to carry a pregnancy. The intending parents already have embryos frozen from their treatment that they plan to use in this application.
* 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 is healthy herself and has had previous uncomplicated pregnancies.
* The intending parents originally met the birth mother through an employment arrangement. Counselling reports that support the application show a warm and open relationship where a close friendship has developed.
* The issue of termination has been discussed in counselling and the reports note that all parties agree that the decision ultimately rests with the birth mother and that her health is paramount.
* 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 at an age appropriate time and notes that the birth mother has the support of her adult children regarding the intended surrogacy arrangement.
* The committee noted that a preliminary assessment from Oranga Tamariki was not attached to the application and asked that this letter be provided to support the application when it is available.

**Decision**

The Committee agreed to **approve** this application subject to a positive preliminary assessment from Oranga Tamariki.

**Actions**

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

1. **Application E21/042 for the Creation of Embryos from Donated Eggs and Donated Sperm**

Mike Legge 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 woman. Both the egg and sperm donors are clinic donors with whom the recipient woman does not have a pre-existing relationship.
* The recipient woman is single and with reduced ovarian reserve. She has completed two cycles with donor sperm without success and donated embryos 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 she will receive obstetric care throughout her pregnancy. The application noted that there is also an increased risk of preterm labour and the recipient woman has had these risks explained to her.
* The committee noted that the recipient woman has a high BMI. Specialist medical reports are comprehensive and support the application.
* The committee reiterated that it was recommended that she receive obstetric care throughout a pregnancy.
* The embryo donor has one child with her partner, and they consider that their family is complete.
* The application canvasses the plan to donate eggs again in the future to different recipients and they note that the recipient woman would be informed of this in the event that there are half siblings born from donations to others.
* The sperm donor in this application is a clinic donor and has donated to four families, this will be the fifth and final recipient of his donation. The application states that he is single, in good health and is motivated by a desire to help people have children after learning about the shortage of donor sperm in New Zealand.

**Decision**

The Committee agreed to **approve** this application subject to the recipient woman receiving obstetric care throughout a pregnancy.

**Actions**

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

1. **Application E21/043 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:**

* This is the applicants second application to ECART, following a previous application for surrogacy with the same surrogate. A healthy baby was born and the surrogate mother has offered to carry another pregnancy for the intending parents.
* The birth parents have completed their family. The birth mother has had the risks of carrying a surrogate pregnancy explained to her and has recently experienced a surrogate pregnancy for the intending parents.
* The committee noted that while she has had previous uncomplicated pregnancies, the application notes that this will be the birth mother’s fourth caesarean section.
* The application also notes some health risks to the birth mother, and that some specialist test results were outstanding at the time of the application. The committee discussed the content of the medical reports and would like assurance that the pending investigations have been performed and are normal and are able to be managed safely throughout the pregnancy.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy. The intending parents intend to ensure that life insurance is in place for the birth mother before an embryo is transferred.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The counselling sessions have also canvassed their experiences from their previous surrogacy arrangement and their ongoing contact in each other’s lives, support from the close family and networks of people the potential child would be welcomed into.
* The intending parents have sought a preliminary assessment from Oranga Tamariki.

**Decision**

The Committee agreed to **defer** this application subject to the outcome of the specialist medical tests to ensure the safety of the birth mother.

**Actions**

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

1. **Application E21/044 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:**

* There is a clear medical reason for surrogacy in this application where the intending mother has a condition that contraindicates pregnancy and the committee noted that surrogacy would give them the best chance of having a child.
* The intending parents intend to create embryos using their own gametes through IVF following the outcome of this application.
* The birth parents have completed their family. The birth mother has had the risks of carrying a surrogate pregnancy explained to her. She has had previous uncomplicated pregnancies.
* The intending parents and the birth mother initially met online and now know each other well. All parties believe they have formed a sound relationship and that they could resolve any future conflict should it arise, and counselling reports show a respectful relationship.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy. The intending parents intend to ensure that life insurance is in place for the birth mother before an embryo is transferred.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The counselling sessions have also canvassed the intending parents’ views on openness with the children, ongoing contact with the birth parents and their children.
* The intending parents have sought a preliminary assessment from Oranga Tamariki.

**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.

1. **Application E21/045 for Embryo Donation for reproductive purposes**

Mania Maniapoto-Ngaia 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 donor couple in this application have children and have embryos left over from their own IVF treatment after completing their family that they wish to donate to the recipient woman.
* The medical report for the donor couple states that there are no medical issues that would affect any child born of this donation.
* The recipient woman is single and a clear medical reason for undertaking treatment with donated embryos exists.
* The donor couple’s motivation for donating has been explored in counselling sessions. They have two embryos to donate and have offered to donate to the recipient woman who is the donor woman’s close and lifelong friend.
* The recipient woman is comfortable having a child who has no genetic link to her.
* The committee noted that any resulting children will be Māori and a different ethnicity to the recipient woman. The committee noted that although the parties intend to share and support the knowledge of any resulting children’s whakapapa, consideration of the difference in ethnicity and what it means to raise a child that is Māori has not been explicitly explored in counselling sessions. The committee would like to be assured that this has been explored and acknowledged through counselling.
* All parties have declared intentions to be open with any child born of this arrangement and the donor couple’s children as biological full siblings. The application also notes that the parties have good support from their immediate family for the proposed donation.
* The implications counselling has covered the issues well and both couples understand the legal issues associated with embryo donation. However, the committee also noted that application did not contain a reference to guardianship and considered this to be important to have in place given the recipient woman’s single status.

**Decision**

The Committee agreed to **approve** this application and note that the committee encourages the Māori heritage of any resulting children is further explored in counselling.

**Actions**

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

1. **Application E21/046 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:**

* ECART noted that the only aspect of this application that will take place in New Zealand is the creation of embryos and then the export of those embryos offshore.
* The intending parents in this application have had a number of fertility treatments over the past three years without success. The intending mother had several miscarriages, then developed a medical condition and experienced a further miscarriage after that diagnosis. Her medical report notes that her uterus is not sustainable for her to carry a pregnancy. There does not appear to be any medical issue in relation to the use of her eggs. ECART agreed the use of a surrogate is a sound decision in the context of the intending mother’s medical situation.
* The birth mother is the intending mother’s sister. The birth parents live offshore and it is acknowledged in the application that this adds complexity to the surrogacy arrangement both in practical terms (the intending parents’ ability to be present for appointments throughout the pregnancy and delivery), and legal terms in relation to the final adoption process. However, the applicants all feel that the family connection makes the birth mother their ideal surrogate.
* The intending parents plan to travel to be with the birth parents closer to the time of the birth so that they are able to take care of the child as soon as they’re able to do so and if possible subject to COVID-19 restrictions. The intending mother also plans to travel if possible, at significant points during the pregnancy. The parties have spoken at length about what they would do if the intending parents are not with the birth parents at time of the birth and, there has been agreement that the birth parents would look after baby until the intending parents able to do so.
* The intending mother feels that her relationship with her sister gives her a sense of security in terms of management of the pregnancy, communication during the pregnancy and certainty around relinquishment of the child.
* The birth parents have children of their own and they consider their family to be completed. The birth mother has stated that the timing is right for her to act as a surrogate given her situation currently and the intending parents feel reassured by this as they don’t want the surrogacy to have a negative impact on her well-being or that of her family. The birth parents have discussed the intended surrogacy with their children and their counsellor has had a discussion with their eldest child.
* The birth mother’s medical condition outlined in the reports is of concern in carrying a subsequent pregnancy. She is also at increased risk of obstetric complications and there is the recommendation that she seek obstetric care should a pregnancy be established. There has been discussion around the possibility of her delivering by c-section.
* In terms of the clinical context for the birth mother ECART noted that the birth mother has discussed the risks to her with her medical team and appears to understand those risks. The Committee noted in the context of the birth of one of her children that it was reassuring that her subsequent child’s birth was uneventful and, that her current situation further mitigates any risk to her and the potential child. ECART would however, recommend that she receive specialist care should a pregnancy be established.
* Counselling sessions have comprehensively covered the issues associated with a surrogacy arrangement. They have also covered the rights of the parties in relation to a pregnancy, once established, and all parties know that decisions around the pregnancy are legally the birth mothers to make. They have discussed their views around termination and all agree the health and well-being of the birth mother is a priority as is that of the baby and they all hold the view that if there were significant quality of life issues for the child they would make that decision.
* Both parties have sought independent legal advice and Oranga Tamariki has given approval in principle for an adoption order. Testamentary guardians have been appointed in the event the intending parents are unable to care for a child. Comprehensive legal advice has been obtained from specialist lawyers in this field including Margaret Casey QC and there do not appear to be any barriers to adoption of the child by the intending parents.
* The applicants’ wider family know about and are supportive of the process and there has been discussion about ‘openness’ within the family and they have clear plans around the process. The intention is to create embryos here and export them offshore where the embryo transfer to the birth mother will be done. Parameters have been set around the number of transfers the birth mother will have before reviewing the situation with their specialist.
* ECART agreed it would approve this application but discussed whether it has the jurisdiction to do so as the only part of the process that will happen in NZ is the creation of the embryos which is an established procedure.

Because the transfer of embryos and the surrogacy will take place in Australia, it is ECART’s understanding that will be subject to Australian law.

* ECART doesn’t consider that the applicants need ECART approval with respect to the creation of the embryos or their export to Australia for use in the intended treatment.
* However, the Committee has considered the application and agreed that if it was an application that was before ECART for a surrogacy that would take place in New Zealand, ECART would have approved it.
* ECART gives approval should the applicants decide that the embryo transfer take place in New Zealand.

**Decision**

The Committee agreed that it doesn’t consider that the applicants need ECART approval with respect to the creation of the embryos or their export to Australia for use in the intended treatment. However, it considered the application and agreed that if it was an application that was before ECART for a surrogacy that would take place in New Zealand, ECART would have approved it. ECART does give approval should the applicants decide that the embryo transfer will take place in New Zealand.

**Actions**

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

1. **Application E21/047 for embryo donation for reproductive purposes**

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:**

* The recipient couple have had fertility treatment for a number of years without success and the chances of conception using the recipient woman’s gametes are now remote. The recipient woman has been seen by an obstetric physician about the risks of carrying a donor egg pregnancy and the risks have been made clear to her along with a pathway for pregnancy care.
* The donor couple have disclosed their medical history. The donor man has a medical condition which has no health issues for a potential child born of this arrangement and the couple have healthy children from the embryos created as part of their own fertility treatment that they now plan to donate to the recipient couple. There is a one in four chance that a baby born to the recipient couple would have a heritable condition that would require long term medication but would not have any further health implications for the child.
* The donor couple consider their family to be complete. They have discussed donating their remaining embryos for a number of years now and have a profile at clinic that the clinic has matched to the recipient couple in this application.
* The donor couple have declared that they would wish to have ongoing contact with any child born of this arrangement and they would like their children to meet the child and have a social relationship as cousins. They understand the legal implications of this and have spoken to their family about the intended donation. At this stage they think their own children are too young to attend counselling but may welcome that opportunity in the future.
* The recipients have had extensive counselling over the past few years. Their application makes clear that they have explored all avenues in their journey to have a child. They are on the donor egg waitlist because donor egg treatment would typically be the treatment considered next with this couple. That is because it does not appear that there is reason that the recipient man’s gametes could not be used in fertility treatment. The couple have also explored the option of adoption, but they feel that donor embryo treatment is the best fit for them for the reasons set out in their counselling report. They see embryo donation as affording them more certainty in starting their family. Their counsellors also describe them as thoughtful and reflective.
* The recipient couple are not concerned that they won’t have a genetic connection with the potential child and, they describe a shared commonality with the donor couple. They have declared intentions to be open with any child born of this arrangement. They don’t yet know what ongoing contact might look like and have declared that they would like to see the children choosing the relationship they have with the donor couple’s children.
* In the joint counselling the couples agreed that they’d like to stay in contact 2-3 times a year and let relationship develop from there.
* The Committee did not have any concerns in relation to the information provided in this application but discussed the point that egg donation would provide the recipient couple an equally as good chance to parent and, provide the additional advantage of the child being genetically connected to one parent.
* The majority of the Committee agreed that the intended embryo donation offers the recipient couple the best opportunity to have a family at this point in time.

**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. ECART to write to ACART more generally in relation to embryo donation applications now that the requirement for a biological link has been removed from the donation guidelines, to request further information about what sits behind some of the principles it is asked to apply when considering applications and, the weight it should be placing on the biological link in the context of other factors and what those other factors are.

1. **Application E21/048 for embryo donation for reproductive purposes**

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:**

* ECART had previously approved treatment for the recipient woman in this application for an assisted reproductive procedure using donated eggs and donated sperm. That treatment unfortunately, was unsuccessful.
* The recently issued ACART guidelines allow for donation of embryos created with donated gametes which is particularly significant for the donor woman and recipient woman in this application. The donor woman would like to donate her two remaining embryos created with donated eggs and donated sperm to her close friend.
* The recipient woman is a New Zealand citizen who currently works offshore. She has declared that she intends, in the longer term, to return to New Zealand to live.
* The application notes that previously it was significant to the recipient woman that donated gametes are from donors who share a link with her ethnicity as it was important that a resulting child have that link with her culture. In this case, the embryos that are available to her do not have this link. In her counselling sessions she describes having come to terms with this and she sees considerable benefit in the fact that any children born will be the full siblings of her close friend who she spends much time with. She sees children being born into this arrangement as having a family connection they otherwise wouldn’t have.
* The counselling reports describe a close relationship between the women and note that this arrangement is something they have considered for some time prior to the guidelines being changed and the relationship between the two women works well in terms of protecting the well-being of all involved including existing and potential children.
* The donors have given approval for on donation on embryos. If this arrangement is successful, the sperm donor will have children in five different families which is the limit for donation in New Zealand.
* The Committee was satisfied that as a single woman who needs donor egg and sperm that this intended embryo donation is the best or only opportunity for her to have a 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.

1. **Application E21/049 for within family egg donation**

Mike Legge 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 intended within family gamete donation the egg donor would like to donate eggs to her same sex partner’s sister who has age related infertility and her brother-in-law.
* The recipient woman and the donor partner are sisters in a large (essentially New Zealand based), family. Their relationship is considered close and the recipient woman considers the egg donor to be a good friend.
* The counselling reports describe all parties enjoying a close family relationship. They anticipate that this close relationship would continue, bringing them closer following egg donation and, that the extended family would welcome a child born of this intended arrangement.
* The donor couple have been aware of the family fertility struggles of the recipient couple. The egg donor agreed to donate but only to close family. The donor couple have considered being unable to have children themselves in the future and indicate they would not regret the donation. In addition, there has been a discussion relating to the donor couple using any surplus embryos in the future, but they would discuss this with everyone concerned. The egg donor has been clear with the recipient couple that she would not consent to the on donation of the embryos.
* The egg donor is healthy and well and there are no significant medical risks to her in donating her eggs. She has had the risks of egg donation explained to her along with the ways in which the risks will be mitigated. She currently has no children of her own but may consider having children in future. The egg donor and her partner would see their children being social cousins to the recipients’ children and egg donor as a social aunty. They also have declared intentions to be open with the potential child about his or her genetic connection to the egg donor. The gamete donor was born offshore but lives in New Zealand and is waiting for her permanent residency based on her partner’s permanent residency status.
* The recipient woman is of advanced maternal age and has had previous fertility treatments without success. Medical opinion is that egg donation will offer her the best chance of achieving a successful pregnancy. The recipient woman has been referred to a specialist maternal care team and will receive ongoing care from that team should a pregnancy be established.
* The recipient couple believe the egg donation will not change their relationship with the donor couple and they anticipate sharing information with the couple. RW and RP have declared their intention to be open about their child’s genetic origins and to know the connection to the egg donor. The recipient couple hope for a successful pregnancy and if there are surplus embryos, they would attempt treatment to have a second child and full sibling. The recipient couple have agreed with the egg donor that only one attempt at egg donation will be attempted and if unsuccessful they will accept that children were not possible. The recipient man has children from a previous relationship and has declared he will tell them about the donation when a pregnancy is established. He anticipates they will be excited and accepting of a sibling. He is also aware that his children have access to counselling should they wish.
* The aspects and requirements of the HART Act were discussed during counselling sessions. The recipient couple are aware of all the consent processes and their rights relating to making decisions about surplus embryos, including storage conditions. All parties are aware that once an embryo is created that the legal rights sit with the recipient couple.

**Decision**

ECART agreed to **approve** this application and in its decision letter to note that egg donation carries a slightly higher obstetric risk and, given the recipient woman’s age, medications she takes and the fact that she would be having her first baby, ECART would recommend that she have specialist obstetric care.

**Actions**

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

1. **Application E21/050 for within family egg donation**

Mania Maniapoto-Ngaia 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 recipient woman in this application has primary infertility and her medical report also notes other important medical considerations and risks to her in carrying a pregnancy. The recipient man has a diagnosis of male factor subfertility and egg donation is considered an appropriate treatment to help the couple start their family. The recipient woman has had preconception counselling with a high-risk maternal team, and they have recommended a further review should a pregnancy be established.
* The medical report for the donor couple notes that they have completed their own family and that the risks to the donor woman that exist with egg collection have been set out and discussed. The donor has no medical history of note that might impact on the health of the potential children and her own children are healthy and well.
* The donor partner is the recipient partner’s uncle and they grew up together and describe a relationship like that of brothers. Relationships between all parties are described as close and they live in the same part of the country in New Zealand. The donor couple have declared intentions to be open with any child born of this arrangement and they would hope that the child would have a close relationship with their children as a social cousin.
* All parties share a common ethnicity and culture and they anticipate that a child born of this arrangement would be welcomed into this extended family community and receive the benefits of growing up in all aspects of the family’s culture. The applicants and their wider family are residents of New Zealand and intend to make New Zealand their permanent home. The parties are aware that counselling services are available to them and their extended family in future should they need.
* The donor couple have discussed their wish to help the recipient couple start a family prior to making the offer to donate. The egg donor has declared she does not feel compelled to make this donation but rather that it is something she herself wishes to do. She has the support of her partner who has said that he believes she would not make the donation if she did not wish to do so.
* The counsellors have observed a close relationship between the parties, that there is an easy communication and there is confidence that they can work through any issues that arise. Counselling sessions have covered discussions in relation to pregnancy plans and contact. The donor couple’s expectations are that they be notified when a pregnancy is established, and they would give the recipient couple space during a pregnancy so as not to intrude on their experience.
* Counselling sessions also involved discussion around the requirements of the HART Act, and all appear to have an understanding about consent, withdrawal of consent, rights and responsibilities, decisions around termination of a pregnancy, and the donor register and birth certificate requirements.
* The committee noted that the age of the recipient partner was not stated in the application and agreed to approve this application on the basis that it understands from the content of the application that the recipient man is younger than the donor partner (with a stated age of 36 years old), with a reminder to the clinic to enter complete details in future.

**Decision**

ECART 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.

1. **Application E21/051 for embryo donation for reproductive purposes**

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:**

* The donor couple have remaining embryos created from their own IVF treatment that they wish to donate to the recipient woman in this application. The donor couple have completed their own family and have children born from the embryos created. If this treatment is successful, the child/ren would be full biological siblings of the donor couple’s children. They would wish for ongoing contact with any child born of this arrangement and they plan to tell their own children about the donation once a pregnancy is established.
* The recipient woman has a child from a previous relationship, and she is currently single. Her pregnancy and birthing history are described as uncomplicated in her medical report which also describes her unsuccessful recent fertility treatment using her own eggs and donor sperm to have another child.
* The recipient woman has declared her intention to be open with any child born of this arrangement about their genetic origins and, has declared her wish to have ongoing contact with the donor couple and their children. She has a close and supportive family, some of whom live close by to her and could offer practical support. Testamentary guardianship is also in place in the event that she is not able to care for her existing child or the potential child.
* The Committee was satisfied that all appropriate counselling had been done.

**Decision**

ECART 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.

1. **Correspondence**

* The Committee acknowledged the notification from the clinic of a change in circumstance for the applicants in previously approved application *E20/157*.
* The Committee noted this is a straight forward notification acknowledging that the approval is suspended as a result and that they would need to apply again to ECART if something happens in relation to the current circumstances or they want to otherwise use the previous application in future.

*Application E20/083 for Surrogacy involving an assisted reproductive procedure*

* Dr Mary Birdsall declared a conflict of interest and the Committee agreed that she would not take place in the discussion in relation to this correspondence.
* The Committee noted further correspondence in which the question around whether ECART had sought alternative medical input to assist ECART in forming its decision was again raised. In its previous response ECART had advised that it has sufficient expertise to have made its decision in the context of extensive experience considering surrogacy applications and that it had before it in relation to this application, a letter from the birth mother’s specialist that clearly spelt out the risks to her in carrying a surrogacy pregnancy.
* ECART reiterates its decision with respect to the well-being of the birth mother and has sought appropriate medical advice in relation to that aspect of its decision to decline this application.
* With respect to the other matter raised that asks ECART to give guidance as to what further information it would require in order to feel reassured that it would approve a future application in terms of the appropriateness or suitability from the intending mother’s perspective, ECART agreed that it would want to see that an independent psychologist be provided with full access to the intending mother’s previous medical and mental health records and use these records to provide a report in relation to her medical and mental health. ECART’s understanding is that that person would also do a current assessment of the intending mother’s mental health.
* **Actions:** Chair and Secretariat to draft a letter that will be circulated to ECART for comment and then sent to the fertility services provider.

*NZ Law Commission scope of review of surrogacy in New Zealand*

* The NZ Law Commission has written to ECART asking the Committee for comment on the scope of their review of surrogacy in Aotearoa New Zealand. The NZ Law Commission has included the Terms of Reference for the review and is asking whether ECART would have further aspects it would want to see included and whether ECART would wish to be involved in the public consultation process. ECART agreed that it would like to be involved in this process. The third question posed is whether ECART thinks it would be appropriate to meet as a committee with the Law Commission to discuss the scoping stage of the Terms of Reference. Given that ECART is the committee that decides all surrogacy applications involving ART it has a valuable perspective to offer about what is working and where changes could be made and would welcome a chance to meet.

*Query from a fertility treatment service provider about two cases that involve applicants who are based offshore*

* The provider asked whether ECART would accept applications where the legal and counselling reports are written by offshore professionals. ECART would accept such reports in relation to counselling but not in relation to legal advice unless the advice relates to law in the lawyer’s jurisdiction. For example, where surrogacy treatment takes place in Australia then that treatment is subject to Australian law and is outside ECART’s remit.
* The provider also asked whether the standard reports need to be completed when other reports have already been completed. ECART would accept other reports as long as they deal with the issues that ECART is required to consider. ECART’s expectation is that the information on the forms is covered in the report otherwise ECART may not have all the information it requires to make a decision.
* Additional information required would depend on the type of application before ECART. A traditional surrogacy for instance wouldn’t need ECART approval.
* In cases where a surrogate lives offshore and gives birth offshore, legal advice in relation to the process as it applies in that country for that part of the process is needed

**Meeting close**

Confirmation of next meeting on Thursday, 3 June in person.

Confirmation of ECART member in attendance at next ACART meeting on 15 April 2021. Paul Copland to attend.